110-264

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1883.

No. 202.

JOHN J. FREEMAN, TRUSTEE, APPELLANT,

vs.

A. H. H. DAWSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 20, 1880.

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UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof begun and held for its ———— term, A. D. 18—, at the United States court-house, in the city of Memphis, in said district, on, to wit, the —— day of ———, A. D. 18—, in the following cause, to wit:

S. B. STEERS et als., plaintiff,
No. 329.] *vs.* } Equity.
R. C. DANIEL et als., defendant.

2 Circuit Court of the United States, western district of Tenn.

S. B. STEERS et al.
329.] *vs.* } Equity.
R. C. DANIEL et al.

For the purpose of transcribing only so much of the record herein as is material to the presentation of the questions to be reviewed by the Supreme Court of the United States on the appeal of J. J. Freeman, it is stipulated as follows:

1. The original bill in this case was filed by S. B. Steers & Co. in the state court of chancery on the 7th day of August, 1878, to enforce an indebtedness of $8,276.00 alleged to be due to them from R. C. Daniel. The bill was filed under secs. 1981 to 1990, inclusive, of the code of Tennessee, the complainants having furnished and put up under contract with R. C. Daniel the compress, boilers, engine, etc., etc., and claiming a mechanic's lien thereon, and on the
3 leasehold interest of Daniel in the realty upon which the same was erected. This was the same compress and appurtenant machinery and the same leasehold interests upon which the executions issued under the judgments recovered by A. H. H. Dawson were levied on July 9th, 1878, and the same upon which the trust deed was executed by Daniel to J. J. Freeman, trustee, on the 22d day of Nov., 1878. On the 13th day of February, 1879, said cause was removed to this court, and in this court on the 15th day of February, 1879, said Steers and Co. filed an amended and supplemental bill, to which they made A. H. H. Dawson and J. J. Freeman and the beneficiaries under the said trust deed defendants, and claimed by virtue of their mechanic's lien priority of lien over the levies in favor of said Dawson, and over the said trust deed to Freeman.
4 Under the decree entered herein on the 13th day of June, 1879, the said leasehold interests, compress, and appurtenant machinery were sold upon the terms therein set forth, and out of the proceeds the indebtedness to said Steers and Co. was discharged in full, and the remaining portion of said proceeds disposed of directed by the decree—$6,000.00 thereof—remaining in court to await the

disposition of the controversy between A. H. H. Dawson and J. J. Freeman, trustee. Inasmuch, therefore, as the complainants have no further interest in this cause, the original, amended, and supplemental bills are, by consent, omitted from the transcript. Copies of the leases of John M. Lea and W. Z. Mitchell, respectively, to R. C. Daniel are on file in the record, and will be copied as part of the evidence in the cause.

2. On the 19th day of March, 1878, A. H. H. Dawson commenced two suits on the law side of this court against R. C. Daniel,
5 and on the 6th day of June, 1878, recovered judgments against him for the sums of $2,610.69 and $3,019.22, respectively. It is agreed that a copy of said judgments, the executions issued thereon, the levies endorsed on the same, the writs of venditioni exponas, and all orders and entries in the cause may be taken as a full copy of the record of said suits in making up the transcript of this cause.

No question is made as to the jurisdiction of the court to render said judgments, nor of the validity and regularity of the same. Therefore, only so much of the record of said suits of Dawson *vs.* Daniel as above indicated need be copied, the same being all that is material to the presentation of the questions here involved.

3. This record will be transcribed in full, except such parts
6 as are by this agreement indicated to be omitted.

HUMES & POSTON,
Atto's for Dawson.
METCALF & WALKER,
Sol's for Freeman.

(Endorsed:) 329; S. B. Steers & Co. *vs.* R. C. Daniel et. al.; agreement of counsel as to making up transcript; filed Nov. 11th, 1880; Bell W. Etheridge, clerk; W. B. Weisiger, d. c.

7 In the Circuit Court of the United States for the western district of Tennessee.

S. B. Steers and others
No. 320.] *vs.* } In Equity.
R. C. Daniel and others.

The cross-bill of Jno. J. Freeman, trustee, &c., in this cause, brought by him for and in behalf of the beneficiaries of the trust deed executed by R. C. Daniel to said Freeman on the 22d of November, 1878, which is made a part of this cross-bill, as Exhibit A, against A. H. H. Dawson, a resident of the state of New York, respectfully shows unto your honors:

That on the 22d of November, 1878, the said R. C. Daniel executed to him the trust deed filed as a part of this bill, as Ex-
8 hibit A, to secure the debts named therein upon the property specified in said trust.

That the original bill in this cause was filed to enforce the me-

chanic's lien for an unpaid balance due the complainant in that bill for the erection of the cotton compress mentioned in the pleadings and other proceedings in this cause.

That, by consent of all parties, a sale has been effected of said property at the sum of $16,000, by means of which the claim of the complainants in the original bill will be satisfied.

But there will be a surplus, and six thousand dollars of the same has been, by the consent of parties and by the decree of this court, deposited with the clerk of this court, subject to the rights
9 of the complainants in the cross-bill filed May 15th, 1879, and the rights of those parties represented by complainant in this cross-bill, and said A. H. H. Dawson, who claims to be a judgment lienor and creditor of said R. C. Daniel.

Complainant shows that the just debts and bona fide claims due and unpaid in said deed represented by him are about $——, exclusive of the claims of the complainant in the cross-bill filed May 15th, 1879.

That complainants in said cross-bill also claim that they are beneficiaries, as compl'ts is informed and believes, because they say that to a large extent their money produced and paid for said property, the same having been used by said R. C. Daniels under such
10 circumstances as to create a resulting trust in their favor, which they are setting up in their cross-bill of May 15th, 1879. But this complainant is informed and believes that whilst relying on the said resulting trust they do not abandon any further or additional rights that they may have acquired under said deed of trust, not inconsistent with their claim as set up in their cross-bill.

Complainant shows that the bona fide claims represented by him exceed the amount of the fund deposited with the clerk, viz., $6,000.00.

That the registration of the deed to him on the 23 of Nov'r, 1873, vested him with the vested legal title to said property, so far as the rights of said Daniel are concerned, from that date.

That said Dawson at that date had no lien upon said prop-
11 erty, and no judgment in force and effect.

That the title of complainant as trustee is superior to that of said Dawson, whose claims were not a lien when the deed of compl't was registered, and which claims, as said Dawson insists, are between five and six thousand dollars—nearly six thousand, as he claims.

Complainant is informed and believes that the claims of said Dawson are unjust; that they are being contested on appeal in the state of New York, where suit was originally brought; that only a small amount, if anything, is due said Dawson.

The premises considered, compl't prays that this be filed as a cross-bill in this cause; that def't Dawson be brought before the court by process or publication; that he appear and answer, but not
12 under oath; that complainant's title to said fund of $6,000 be declared superior to that of said Dawson, and that it be

applied to the payment of the debts secured by said deed of trust; and he prays for general relief, and as in duty bound will ever pray, etc.

GANTT & PATTERSON AND FLIPPIN,
Sols. for Freeman.

Personally appeared before me John J. Freeman, and made oath that the facts stated in this bill are true to the best of his knowledge, information, and belief.

——— ———.

Sworn and subscribed before me, June 9, 1879.

——— ———.

13 (Endorsed:) In Equity, No. 329. Circuit Court of the United States, western district of Tennessee. S. B. Steers and others *vs.* R. C. Daniel et als. Cross-bill of Jno. J. Freeman. Filed May 25, 1880. Bell W. Etheridge, clerk; W. B. Weisiger, d. c. Rec'd by marshal for service on June 1, '80, at 12:45 p. m.—Memphis, Tenn., June 1, 1880. I received this writ at 12:45 p. m. on June 1, 1880, and at about 3 p. m. on said date I served a certified copy hereof on D. H. Poston, of Mess. Humes & Poston. Serv., 2.00; 1 m., 06—$2.06. M. Williamson, U. S. marshal; by A. J. Gardner, dep. Rec'd and filed June 3d, 1880. Bell W. Etheridge, clerk; W. B. Weisiger, d. c.

14 Know all men by these presents, that we, J. J. Freeman, trustee, and ——— ———, held and firmly bound unto said plaintiffs in the sum of two hundred and fifty dollars, but to be void on condition that the said plaintiffs do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiff in the Circuit Court of the United States for the western district of Tennessee, at said city of Memphis, against the defendant; and also on failure of the said plaintiffs to prosecute the said suit with effect; and also of the defendant, if convicted, to pay said costs.

Witness our hands and seals this 25th day of May, A. D. 1880.

15 JNO. J. FREEMAN, [SEAL.]
Trustee.
JNO. J. FREEMAN. [SEAL.]

Approved and acknowledged before me the 25th day of May, A. D. 1880.

BELL W. ETHERIDGE, *Clerk.*
W. B. WEISIGER, *D. C.*

(Endorsed:) No. 329. S. B. Steers et als. *vs.* R. C. Daniel et als. Cost bond. Filed May 25, 1880. Bell W. Etheridge, clerk; W. B. Weisiger, d. c.

16 I, R. C. Daniel, of the county of Shelby and state of Tenn., for the consideration of one dollar to me in hand paid, and the other considerations hereinafter mentioned, do hereby convey to John J. Freeman, upon the trust to be hereinafter stated, the following property, to wit: First, all my right, title, and interest in and to a certain leasehold on certain real estate situate and being in the city of Memphis and county of Shelby, state of Tennessee, the said property lying on the south side of Washington street, and more particularly described as follows: Lots Nos. five and six of Robinson's subdivision of original county lots four hundred and ninety-nine, each of said lots fronting fifty-nine and one-half feet, and running back southwardly between parallel lines one hundred and sixty feet, more or less, to the north side of the alley between Adams and Washington streets, being the same property leased by
17 W. Z. Mitchell to R. C. Daniel, Jan'y 7th, 1878, for the period of six years, said deed of lease being recorded in book 13, page 82, register's office. Also a certain lot of ground, part of county lot 499, beginning at a point on the south side of Washington street, 120 f't west of High street; running thence westwardly eighty feet, more or less, to the west line of John M. Lea's lot; thence southwardly between parallel lines to an alley 148½ feet distant; thence eastwardly eighty feet, more or less, to the east line of John M. Lea's lot; thence northwardly 148½ feet to the south side of Washington street, being the same property leased by John M. Lea on the 1st of Jan'y, 1878, to R. C. Daniel, for the period of six years. Also a certain lot of ground situate in the rear of the last-named lot, beginning at a point on the north line one hundred feet west of the west line of High street; thence running westwardly on the lines of Adams street 100 feet, more or less; thence
18 northwardly on a line parallel to High street 160 feet, more or less; thence eastwardly on a line parallel to Adams st. 100 feet, more or less; thence southwardly 160 feet to the beginning, being the same property leased by John M. Lea to R. C. Daniel Jan'y 1st, 1878, for six years, and all the buildings and improvements situate and being on the aforesaid described lots. Also the three-fourths of the certain improved Morse Tyler cotton compress, with its engines, boilers, machinery, and appurtenances thereto belonging, located and being on the aforesaid described lots. It is in part the same property heretofore conveyed to H. C. Warinner in trust to secure certain liabilities due to S. B. Steers & Co., and which liabilities are particularly set forth in said conveyance, and this is made subject to that conveyance so far as the part of the property embraced in that conveyance to said H. C. Warinner, trustee, is concerned.

19 To and to hold all the foregoing described property unto the said John J. Freeman, his heirs, successors and assigns, forever; and the said R. C. Daniel, for himself, his heirs, and legal representatives, does covenant and agree to and with the said John J. Freeman, his heirs, successors, and assigns, that he is the legal

owner, individually or in trust, of the before described property; that the same is unencumbered except by the claim of S. B. Steers & Company, and the rights of the parties secured herein; that he has the right to convey the said property as aforesaid; that he will warrant and defend the title thereto unto the said J. J. Freeman, his heirs, successors, and assigns, against the lawful claims of all persons whomsoever. But this conveyance is in trust for the following uses and purposes, and none others, to wit:

Now, the said Daniel, in procuring said lease and erect-
20 ing said building and said cotton compress, borrowed from various persons certain sums of money, with the understanding that it would be used for and about the same, and that when the works were finished and the enterprise ready to start he would procure a charter and organize under it and issue stock to said persons for the money so advanced, the stock to be accepted at par, as it was believed that it would be a paying business, and the money would be well vested; but said R. C. Daniel has met with unexpected difficulties and delays in getting said enterprise ready and in organizing a corporation. These delays have lost a whole year's business; they caused him to create other debts on the faith and expectation of paying it out of or securing it upon the said property, and most of which debts were to aid in said enterprise or to replace funds used for that purpose, as he
21 is still not ready to organize the corporation, and part of the property is embarrassed with a lien debt and trust in favor Stears & Co., and it has been necessary for him to get further advances in order to start the business. It is right and just that he should secure the said several sums on said property by creating a trust for that purpose to secure their payment by sale of the property or in stock of a corporation, if a corporation is formed, and all or any of said creditors are willing to accept stock for their said debts. The said debts are as follows, and secured as herein named; that is, to S. Higgins Craig and Eleanor E. Lowry, the former $5,000 and the latter $1,000, advanced and used in procuring the leaseholds, in preparing them, and in the erection of the buildings, these sums being borrowed with the understanding that they should be used for the purposes named above, and the said Daniel therefore
22 secures them on this particular part of the said property, giving them preference over the other debts named as to the same; they were advanced on the 1st day of December, 1877, and bear interest from that time. To F. L. Hanly $2,000, due on the 1st day of December, 1877; to Thomas H. Milburn the sum of $2,000, due on the 16th day of January, 1878; to David M. Rodman $1,000, due December 1st, 1877; all of the foregoing sums were advanced with the expectation that they would be paid in stock if a company were organized. To W. Z. Mitchell $500, due the 1st day of July, 1878, and 1st day of January, 1879; to John M. Lea $370, due January 1st, 1879; to W. H. Cherry the sum of $500, due the 1st day of July, 1878; to Chas. Yeager, to secure him in the

indorsement of R. C. Daniel, three notes for the sum of $6,000 in the aggregate, and for $2,000 each, bearing date November
23 16, 1878, and maturing respectively at ninety days and in four and six months, and payable at the Fourth National Bank, Memphis, Tenn., the same being for use in starting said enterprise. Now, if the said R. C. Daniel shall pay all of such debts by the 20th day of May, 1879, then this deed is to be void, and the said John J. Freeman shall reconvey by quit claim the said property to said R. C. Daniel or his assignee; but if said R. C. Daniel should not pay as herein stipulated, then the said trustee may sell said property upon thirty days' notice for payment of all said debts, or such as may remain due, unless said Steers & Co. will give further time upon any portion of the lien debt due them at that time, and in that event the sale hereunder is to be postponed for the time fixed for forbearance by said Stears & Co., provided it does not extend beyond the 16th day of November, 1879, and provided further, that
24 if the Stears debt is paid off by the time specified in the trust for the benefit of said debt, then no sale shall take place under this deed until the 16th day of November, 1879.

Oath of office and bond not required of the trustee. The sale may be for cash, and without any equity of redemption, in order to give purchaser a perfect title; the proceeds of sale shall go first to pay the expenses of this trust, including a reasonable fee to counsel for its preparation; secondly, to pay the debts provided for in the manner specified; and lastly, any balance to be paid to me. Witness my hand and seal this 22d day of November, 1878.

R. C. DANIEL, [SEAL.]

It is agreed that the foregoing is a true copy of the original trust deed of which it purports to be a copy, and that the same was duly acknowledged and filed for registration on the 23d day of
25 November, 1878, in the register's office of Shelby county, and duly registered therein, and said copy may be used in the cause the same as if it were duly certified.

HUMES & POSTON,
For A. H. H. Dawson.
GANTT & PATTERSON &
METCALF & WALKER,
For × Complainants.

26 S. B. STEERS and another
vs.
R. C. DANIEL et als. } No. 320.—In Equity.

Complainants S. Higgins Craig, Eleanor E. Long, and H. S. Hanly, by leave of court had and obtained, bring this amendment to their cross-bill filed May 15, 1879, in this cause, and by way of amendment aver and show that by mistake of the draughtsmen it was alleged that the moneys left in trust with def't R. C. Daniel for

their use, as alleged in said cross-bill, were represented in said cross-bill to have been left with him on the 1st October, 1878. The fact is, however, that the said moneys were delivered to him prior to October 1st, 1877, and said allegation is accordingly so amended and corrected.

And complainants make this further amendment, that said
27 moneys were delivered to said Daniel to be used for their use and benefitted, and not loaned to him, and in so far as their cross-bill speaks of the transactions as loans, the same is amended and corrected so as to aver that said moneys were delivered or left on trust with said Daniels to be used for compl'ts in the manner stated in their said cross-bill.

And in consideration of the premises, compl'ts pray all fit and suitable relief to which they are entitled under this amended bill; and will ever pray, &c.

GANTT & PATTERSON AND FLIPPIN,
Sol's for Compl'ts.

(Endorsed:) In equity; No. 320; S. B. Steers and another *vs.* R. C. Daniels et als. Amendment to cross-bill of S. Higgins Craig et als.

28 To the Judge of the U. S. Circuit Court for the western district of Tennessee:

Richard C. Daniel, a citizen of Shelby county, Tennessee; S. Higgins Craig; M. T. Lowry and E. Lowry, his wife; Samuel G. Handley and F. L. Handley, his wife, all citizens of Kentucky, bring this their cross-bill against David M. Rodman, of Louisville, Kentucky; Thos. H. Milburn, Samuel Parker, Nicholas S. Rambut, T. Preston Young, W. Z. Mitchell, of Shelby county, Tennessee, and John M. Lea, of Davidson county, Tennessee, and Wm. H. Cherry, of Davidson county, Tenn.; Chas. Yager, of Shelby co., Tenn., and Jno. J. Freeman, trustee, &c., of Shelby co., Tennessee; A. H. H. Dawson, of New York, and S. B. Steers and E. L. Morse, composing firm of S. B. Steers & Co., of New Orleans, Louisiana.

And now complainant show unto your honors that on the 7th day of August, 1878, the defendants, S. B. Steers and E. L. Morse, claiming to be partners, filed a mechanics' lien bill in the Chancery Court of Shelby county, and afterwards, viz., Nov. 21, 1878, filed an amended and supplemental bill, which were afterwards removed into this court under the act of Congress applicable thereto; and afterwards, to wit, on the 15 day of February, 1879, they filed a
29 further amended and supplemental against these complainants and others, alleging, among other things, the indebtedness of Rich'd C. Daniel to said S. B. Steers & Co., and asking the court to enforce a mechanics' lien against a certain cotton compress property lying and being in the city, and for all the facts in relation thereto complainants refer to said original and amended

and supplemental bills, and as to the answers filed herein by Melvin T. Lowry, Eleanor Lowry, S. Higgins Craig, and Fanny L. Hanly and S. G. Hanly, the females herein mentioned being the sisters of said Richard C. Daniel.

And complainants now reiterate what was stated in said answers referred to, and adopt them, and make them as far as they go part of this their cross-bill.

Complainants state that the cotton compress referred to is a valuable property, and ought to be worth, if a fair sale could be had therefore, some thirty or thirty-five thousand dollars. They represent further and show that being (the complainant Eleanor E. Lowry, S. Higgins Craig, and Fanny L. Hanly) the sisters of said Richard C. Daniel, and possessed in their own right of separate estates, that they loaned to said Richard C. and permitted him to use of the money of the first-named three thousand dollars, of the last-named sister two thousand dollars, and of S. Higgins Craig the sum of five thousand dollars; and they represent that on delivering said money to said Richard C. Daniel they agreed with him that he was to use said moneys in whatever way he might think best for their interests;
30 they expressed to him their entire confidence in his business capacity, and with this understanding on their part, and on the part of said Richard C., the said Richard C. made a bargain, as detailed in complainant's bills, and invested in said contracts with defendants S. B. Steers & Co. the whole of said sums before mentioned, and it was on their part and the part of said Richard C. Daniel agreed that as soon as said compress should be in full running order a stock company should be organized and shares of stock were to have been issued, and such numbers and amounts as would have corresponded with the moneys respectively advanced by these complainants were to have been issued to them, or to have been held for them by their brother, the said Richard C. Daniel, as their trustee or agent. They claim that as to the ten thousand dollars held by Rich'd C. Daniel of their money, and put into the compress concern, was done so by said Richard C. with the express understanding that they were to own and did own that amount in said concern.

And complainants further insists and show, while it may be true that said A. H. H. Dawson would, if his judgment be not reversed, be entitled to collect the same, if he can, of and from said Richard C. Daniel, they submit that he should be prevented from collecting and realizing the same out of their property; that as to S. B.
31 Steers & Co. they stand somewhat in the relation of copartners, and while not controverting other claims set out in the second deed of trust to John J. Freeman, they still insist that their claims are to be preferred and paid in preference to all others. There is a resulting trust, as they claim, in their favor, and they submit that, upon the facts as herein stated, this court should order that after the demands of Steers & Co. is satisfied that ten thousand dollars of the remaining money should be paid over to them, with in-

terest on the same from Oct. 1, 1878, which was the time when it was advanced.

They submit that as a court of equity is alone competent to give full and competent relief in cases where the right of married women are involved, as well as in cases of trusts, that your honors will see that the rights of complainants herein are fully protected.

The premises considered, &c., &c., the complainants pray that defendants named in the caption be made parties defendant to this bill, and for that purpose that all necessary process, copy, bill, and publication do issue and be made; that all of said defendants be required to answer the allegations herein as if specially interrogated thereto in an especial and particular manner.

And will your honors, upon hearing said cause, order and
32 decree that after the sale of said compress property, and after Steers & Co.'s claim shall be satisfied, that the sum of ten thousand dollars be paid over to said named women and S. Higgins Craig, widow, &c., or their proper representative, trustee or agent.

And complainants pray for such other and further and different relief as to your honors may seem equitable and in accordance with good conscience; and as in duty bound complainants will ever pray, &c., &c.

GANTT AND PATTERSON AND
WM. S. FLIPPIN,
Sols. for Complainants.

(Endorsed:) Circuit Court U. S. for the western dist. of Tennessee; R. C. Daniel, S. Higgins Craig, and others, *vs.* S. B. Steers & Co. and A. H. H. Dawson; 329 eq.; filed May 16, 1879; Bell W. Etheridge, clerk; cross-bill; Gantt & Patterson and Wm. S. Flippin, solicitors.

33 In the Chancery Court of Shelby county.

S. B. STEERS, complainant,
against
ROBT. C. DANIEL, EDMONIA P. DANIEL, ELEANOR E. LOWRY, FANNY L. HANLY, S. G. HANLY, S. HIGGINS CRAIG, and MELVIN T. LOWRY, defendants.

The separate and joint answers of Eleanor E. Lowry, wife of Melvin T. Lowry, and S. Higgins Craig, widow, &c., of Jessamine, county, Kentucky, and Fanny L. Hanley and S. G. Hanley, of Lincoln county, Kentucky, in answer to bill filed against them by S. B. Steers in the Chancery Court at Memphis, Tennessee:

1st. They have no knowledge on the subject, but suppose
34 what complainant states about his being the owner of a patent and building compresses for cotton to be true.

2d. They admit, not of their own knowledge but from hearing, that def't Rich'd C. Daniel entered into an agreement with com-

plainant for the erection of a compress for baling cotton at Memphis, Tennessee.

3d. The defendants Eleanor E. Lowry and Fanny L. Hanley represent that they are sisters, as well as S. Higgins Craig, of the defendant Richard C. Daniel, and that said Richard C. was permitted by them to have and use for the first the sum of $3,000.00, and for the second the sum of $2,000.00, and for the last named the sum of $5,000.00; and the defendants aforesaid, sisters as aforesaid, viz., Eleanor E., Fanny L., and S. Higgins Craig, wives and widows as aforesaid, on delivering said money to said Richard C., agreed with him that he was to use said moneys in whatsoever way he might think best for their interests; they expressed to him the entire confidence in his business capacity, and with this understanding on their part and on the part of said Richard C., the said Richard C. made a bargain as detailed in complainants' bill, as they are informed, but invested in said contract with complainant the whole of said sums before mentioned; and it was understood and agreed on the part of said Richard C. and them that as soon as said compress should be in full running order that a stock company should be organized, and shares of stock were to have been issued; such numbers of said shares as corresponded with the amounts that they had furnished being issued and delivered to them, or to be held by said Richard C. as their trustee. So, in fact, these defendants claim that the ten thousand dollars hereinbefore spoken of as their money was accordingly by them invested as detailed above in this compress by their agent or trustee, said Richard C.

35

36

4th. Defendants, for answer to so much of complainants' bill as relates how the different payments were made to him and what is still due, say they know nothing personally of such matters, but suppose it to be true.

5th. Defendants, for answer to so much of said bill as relates to the Dawson matters detailed in complainants' bill and to the proceedings in connection therewith, answer and say they know nothing of their own knowledge of such matters.

37 6th. The defendant for further answer say they know nothing of the interest or purchase of other parties into said compress contract of their own knowledge, except as to themselves, and that interest they have already detailed.

7th. The defendants of their own knowledge can say nothing of said mechanics' lien, but from what they have heard suppose what is stated in the bill to be true. They do insist, however, that what may be left after securing said lien, or lien holder, shall to the extent of ten thousand dollars and interest be decreed to them as their money.

8th. And the defendants, for answer to the amended and supplemental bill filed in this cause, answer and say they know nothing

personally of the facts beyond what they have already admitted
38 in their previous answers.

They submit their rights to the court for their protection, having an oversight of affairs of married women and widows and orphans, and insist that nothing be allowed to prejudice their rights; that the facts detailed by complainant may be wholly true or not, as they have no personal knowledge.

If a decree be made for the sale of said compress and in favor of complainant, that the court will declare their rights in the residue at least to the extent of ten thousand dollars, and interest thereon from Oct. 1st, 1877.

And having fully answered, they pray here to be dismissed.

WM. S. FLIPPIN,
Sol'rs for Def'ts.

And, further answering, these defendants say they concede and admit the validity of the mechanics' lien in favor of complain-
39 ant, and that their claim is prior to that of these defendants, but they insist on their right to the surplus that may remain.

ELEANOR E. LOWRY.
M. T. LOWRY.
S. AIGGINS CRAIG.
WM. S. FLIPPIN,
Sol'r for Def'ts.

STATE OF KENTUCKY, }
Jessamine county. }

On this 6th day of February, 1879, personally appeared before me, L. D. Baldwin, a notary public within and for said county, Eleanor D. Lowry, Melvin T. Lowry and S. Higgins Craig, whom I personally know, and who made oath in due form of law that the foregoing facts as within detailed of their knowledge are true, and those stated on the information of others they believe to be true.

Subscribed and sworn to before me the day above written,
40 and my official seal affixed.

L. D. BALDWIN,
Notary public, Jessamine county, Ky.

(Endorsed:) No. 329, eq.; Circuit Court of the United States, western district of Tennessee; S. B. Steers *vs.* R. C. Daniel et als.; answer of E. E. Lowry and M. T. Lowry and S. Higgins Craig; filed Mch. 4, 1879; Bell W. Etheridge, clerk; W. S. Flippin, deft's proctor.

41 UNITED STATES OF AMERICA, }
Western district of Tennessee. }

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun

and held for its Nov. term, A. D. 1878, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 15th day of Feb., A. D. 1879, in the following cause, to wit:

S. B. STEERS et als., plaintiff,
vs.
R. C. DANIEL et als., defendant. } No. 329. Equity.

The complainants herein move in open court for a preliminary writ of injunction to restrain the defendant A. H. H. Dawson and the marshal of the court acting under the executions in his hands in favor of said Dawson, (the same issued under the judgments particularly described in the amended and supplemental bill this day filed herein)
42 from proceeding to sell the compress, machinery, and appurtenances and the leasehold interest of the defendant Daniel, levied on by the marshal by virtue of the executions aforesaid. And the court heaving heard the motion, is pleased to and doth grant the same, and orders the writ of injunction to issue as moved for, upon complainants giving an injunction bond in the penalty one thousand dollars, and conditioned that they will pay such damages as the defendant Dawson may suffer by reason of the injunction if it shall determined that the same was wrongfully procured. And thereupon, after the grant of the injunction as aforesaid, it was agreed in open court (and upon such agreement ordered by the court) between the solicitors of complainants, defendants Dawson, Daniel and
43 other parties, that the custody and possession by the marshal of said property shall remain as it is undisturbed, and that for the preservation of the property he may employ a day and night watchman for the sume, but without in any manner affecting the rights or claim of any party hereto. And nothing herein contained shall be held in any manner to affect or release any lien that the defendant Dawson claims to have acquired under his said judgments, executions, and liens.

44 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

Whereas S. B. Steers & E. L. Morse, composing the firm of S. B. Steers & Co., have filed their bill of complaint in the Circuit Court of the United States for the district aforesaid against R. C. Daniel et als., praying, among other things, that said defendant A. H. H. Dawson, his attorneys and agents, be enjoined from further proceeding to enforce sale of R. C. Daniel's interest in the leasehold improvements, compress, &c., described in complainant's original, amended, and supplemental bill by virtue of execution or other process or decree based upon the two judgments of said Dawson *v.* said Daniel until the further order of said court, and have obtained the *fiat* of the Honorable E. S. Hammond, United States district judge, directing injunction to issue according to the prayer of the bill:

You will therefore notify said A. H. H. Dawson, his agents and attorneys, at once and entirely to desist from further proceeding in

the premises above described until the further order of the court in the premises, and the pains and penalties prescribed by law. And how you shall have executed this writ do you make due and legal return at the next term of said court at the Federal court-room, in the city of Memphis, on the fourth Monday in May next.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 18th day of March, 1879, and of our Independence the 103 year.

[SEAL.] BELL W. ETHERIDGE, *Clerk.*

45 (Endorsed:) No. 329; Circuit Court of the United States, district of west Tennessee; S. B. Steers et als. *vs.* R. C. Daniel et als.; injunction writ; issued 18 day of March, 1879; Bell W. Etheridge, d. clerk; came to hand —— day of ———, 18—; returned & filed April 2, 1879; Bell W. Etheridge, clerk; H. E. Andrews, dep. clk. At Memphis, Tenn., and on 18th day of March, 1879, I read and made known the contents of this writ of injunction personally to W. Y. C. Humes at 12.06 p. m., and D. H. Poston at 1.50 p. m., they composing the firm of Humes and Poston, and being attorneys for A. H. H. Dawson. The said A. H. H. Dawson not to be found in my district. M. T. Williamson, U. S. marshal, w. d. Tenn. Fees: $4.12-100.

46 In the Circuit Court of the United States for the western district of Tennessee.

S. B. STEERS
vs.
R. C. DANIEL et al.

The separate answer of A. H. H. Dawson to the cross-bill filed herein of John J. Freeman.

Respondent, for answer to the said cross-bill, answering, says:

That he denies that said Freeman as such trustee has any authority to represent any of the beneficiaries under said trust deed of the 22nd November, 1878, and he calls upon said Freeman for such authority, and he also calls upon him to show by proper proof exactly which of said beneficiaries he represents, and to produce and file the evidences of any indebtedness they or either of them claim to own and hold, producing the original claims and all securities held by them or either of them.

Respondent admits that about the 22nd day of Nov., 1878, said Daniel did make a deed of trust to said Freeman as trustee, pretending to secure to certain parties therein named certain indebtedness, but respondent does not know the date of such instrument, nor when (?) it was filed for record, or that the beneficiaries therein named accepted its terms and provisions, neither do they know what
47 portion of said claim so secured have been paid off or now have existence, and of all these facts he requires full proof.

Respondent denies that any of said debts are bona-fide debts, or

now or ever really had an existence, and of the existence thereof and of the consideration thereof he calls for and demands the full proof.

As to the present condition of this record, and the steps and objects of the proceedings herein, respondent refers to the papers and files in the cause for greater accuracy and certainty.

Respondent denies that the moneys of any of the parties named in said pretended trust deed to J. J. Freeman as trustee went into the purchase of the compress sold herein, and of the fact they require full proofs; they deny that said Daniel had made any such contract with them as to raise any trust in their favor; deny that it was aught else but a lending and borrowing between them and said Daniel, if he really owes or ever owed them, which is denied.

He avers that said trustee is bound by the terms of the trust, and if the beneficiaries claim under it, they too are bound by its terms and recitals, and are estopped to set up and rely upon a different state of facts to what the trust deed recites, and they are es-
48 topped to claim under it, and they also claim in a different right; such trust deed drawn by Daniel in person, as he understands it, expressly recites that the money was borrowed, and the respondent is advised was the true state of facts of the transaction; and respondent here pleads such trust deed and its recitals as an estoppel against said Freeman's cross-complaint and all beneficiaries who claim thereunder to claim other or future rights and benefits than are set forth and secured to them thereby.

Respondent denies that complainant or the beneficiaries whom he claims to represent have any other rights than are secured to them by such trust deed; they must stand or fall on its sufficiency.

Respondent denies again that complainant Freeman represents any bona-fide debts, or that they exceed $6,000. He denies the purpose of treating (?) the same as issue, that the trust deed was registered 23d Nov., 1878, or that they vested in him (Freeman) the legal title to said property. He denies that the respondent had abandoned the lien or claim, and that he had no judgment or lien upon said property; but respondent avers that some time before the execution of this trust deed said Dawson had levied his execution from said judg-
ment upon the compress and the property upon which it was
49 situate, and all application to quash such levy was then under advice (?) before the Hon. E. S. Hammond, judge of the court, which application was pending when the deed of trust was executed, and which was decided against said Daniel. The levy of the judgment and the application of said Daniel to quash it was a lis pendens (?) to said beneficiaries, who took their title (?) subject thereto in all respects, and like purchasers pendente lite took subject thereto and in subordination to respondent's rights.

The decree of his honor Judge Hammond was that the levy was proper or valid, and that the lien of Dawson was fixed upon the compress and other property from the date of the levy, which was several months anterior to the execution of the trust deed to the said Freeman, trustee. No appeal was ever taken from the ruling,

and same is res adjudicata and final, and is so plead and relied upon by respondent.

Respondent denies that his claim is unjust, or that the same is now pending on appeal in N. Y. or elsewhere.

And now, denying all the other allegations of the cross-bill not herein specifically answered, he prays to be hence dismissed.

50 HUMES & POSTON,
Att'ys for A. H. H. Dawson.

Oath and signing waived.

GANTT & PATTERSON,
METCALF & WALKER,
Sol'rs for J. J. Freeman.

(Endorsed:) No. 329; Circuit Court of the United States, western district of Tennessee; S. B. Steers *vs.* R. C. Daniel et al.; answer of A. H. H. Dawson to x-bill of J. J. Freeman. Filed June 26, 1880; Bell W. Etheridge, clerk; W. B. Weisiger, d. c. Humes and Poston.

51 In the Circuit Court of the United States for the western district of Tennessee.

R. C. DANIEL, S. HIGGINS CRAIG et al.,
vs.
S. B. STEERS, A. H. H. DAWSON et al. } Cross Bill.

The answer of J. J. Freeman, trustee, to said bill.

The defendant, the benefit of any and all manner of exceptions, &c., for answer, says: That he submits all his rights in the premises on the answer (?) and proof to the court.

Now having fully answered, he prays herein to be dismissed with his costs, &c.

JNO. J. FREEMAN.

Subscribed and sworn to before me this 6th day of June, 1879.

H. E. ANDREWS,
Clerk U. S. Dist. Court.

(Endorsed:) No. 329; U. S. Circuit Court; Steers *vs.* Daniel et al.; answer of Freeman. Filed June 6th, 1879; H. E. Andrews, d. c.

52 In the Circuit Court of the United States for the western district of Tennessee, at Memphis.

S. B. STEERS et al.
vs.
R. C. DANIEL et al.

The separate answer of A. H. H. Dawson to cross-bill of R. C.

Daniel, S. H. Craig, M. T. & E. Lowry, S. G. Hanly & F. L. Hanly, herein filed May 16th, 1879.

Respondent, answering such parts and portions of the bill herein as advised it is necessary and proper for him to answer, says: He admits that complainants, S. B. Steers et al., have filed several bills, original and supplemental, at the date mentioned in the bill, and he refers to the same for their contents.

Respondent supposes it was true that the other cross-complainants (excepting R. C. Daniel) are the sisters of R. C. Daniel.

Respondent does not admit that complainants ever had any separate estate; does (?) not admit that they, or either of them,
53 ever loaned to defendant R. C. Daniel any sum or sums of money whatever, and of these facts require the full and ample proofs.

Respondents do not admit that any loan was ever in fact made by complainants to said R. C. Daniel of any sums of money, or that it was upon any agreement as to investment; but he avers, if as a matter of fact any money was loaned by them, it was simply for interest, without any idea of investment, or joint enterprise between them and said Daniel, and they deny all the averments of the bill as to the loan, or any loan to him by them at any time.

Respondent does not admit that any arrangement about a stock co. was in existence at the time of the purchase of the compress, but says this is one of the machinations of the defendant Daniel, who is attempting through this subterfuge to evade the payment of his debts

Respondent, further answering, says: That if it be true, as the cross-bill avers, that the money was advanced by the complainants in the cross-bill on October 1, 1878, the now resulting trust could possibly arise, as the record in this cause show that the compress was bought in October, 1877, and was finally completed, built,
54 and put in running order in February, 1878, and they aver that all this took place before the money of cross-complainants ever was loaned to R. C. Daniel, according to the allegation of the cross-bill, and that no resulting trust could or would arise upon such a state of facts, but that it can only arise out of the transaction as it occurred at the time of the purchase and not afterwards.

Respondent avers that he fastened his lien upon the property in July or August, 1878, by virtue of two executions upon the property, long before cross-complainants loaned their money, to wit, Octo. 1, 1878, and whatever may be their rights as to Daniel and others, their claims are clearly inferior to that of this respondent.

And now, putting in issue the every allegation of the cross-bill to the same extent and in the same manner as if the every allegation thereof was denied, he prays to be hence dismissed.

HUMES & POSTON,
Sol'rs for A. H. H. Dawson.

Oath of A. H. Dawson waived May 23rd, 1879.

WM. S. FLIPPIN,
Sol'r for Daniel.

55 (Endorsed:) No. 329, equity. U. S. Court at Memphis. S. B. Steers & Co. *vs.* R. C. Daniel. Answer of A. H. H. Dawson to cross-bill of S. A. Craig et al.; filed May 23rd, 1879. Bell W. Etheridge, clerk; Humes and Poston, solicitors.

56 In U. S. Circuit Court at Memphis, Tennessee.

S. B. STEERS et al.
vs.
R. C. DANIEL et al. } No. 329. Equity.

The separate answer of A. H. H. Dawson to the bill, amended and amended supplemental bills of S. B. Steers & Co.

Respondent, for answer to said bills, or so much thereof as it is necessary and proper for him to answer, says: He admits the filing of the several bills herein, and he supposes complainants are press builders. He knows nothing of them having put up a press for defendant Daniel, or that they have any ownership thereto, either one-fourth, any other, or different interest. They know nothing, and require full proofs of the facts as to the contract between them and defendant Daniel, or of the indebtedness of the latter to them, and of these facts also require proof.

57 Respondent does not admit that comp'ts are mechanics, or that as such they put up the compress for defendant. He avers on information that they are the owners of some kind of compress, and he further avers that they sold (if any transaction ever took place between them) to defendant Daniel a compress already built at $25,000.00; that it was a sale of a complete compress, put up and in running order, and that no element of a mechanic's lien is or can be predicated upon these transactions; that as well might a man sell a wagon to a purchaser and deliver it to him, put up and in order, and then claim a mechanic's lien upon it because subsequently it was not paid for; and he denies that said complainants has any mechanic's lien, and nothing but a simple debt, without other security that (?) the attachment lien, or perhaps the lien created by the trust deed.

That the contract between compl'ts and defendant (admitting its validity) simply is one of sale. The said Daniel was and is only to pay $25,000.00 when the press is delivered in working order, exactly like the sale of any other personal property for use.

58 Respondent does not admit that all the note set out in the bill as due are for the purchase of the cotton compress, but of the fact requires proper and full proof.

Respondent admits that he has the two several judgments against R. C. Daniel, in this court, aggregating nearly $6,000.00, and he admits that he levied upon said Daniel's interest in the cotton compress,

and that such levy was made and his rights had attached long before the filing of the bill herein, and he denies that such levy has ever been abandoned or released, either by him or the marshal of the United States court for the western district of Tennessee, at Memphis, but avers that the same is in full force and effect, and that respondent is entitled to be first satisfied from the proceeds of sale of the compress when made.

Respondent files herewith said judgments and the entire record in which the said judgments were recovered. He avers that said Daniel has made the same defense to the said judgments and
59 levies, and has attempted to quash the levies of such judgments because of their invalidity, and for the further reason that they were abandoned and released; the whole matter was finally settled as between all the parties who could raise such a question by the Hon. E. S. Hammond, judge of the court, and his decision has never been appealed from, reversed, or modified, in whole or in part, and is res adjudicata and final in this cause, and as such is here plead to the same extent and in as full a manner as if a special plea in that behalf were interposed.

Respondent admits that said Daniel has executed the trust deed to H. C. Warriner, trustee, to secure complainants what it is alleged he owes them, but respondent alleges this was made long after respondent's lien had attached and the lis penden was notice to them. That such trust deed had the effect *the effect* and operated to release the pretended mechanic's lien, if any ever in fact existed, which is here again denied; that the extension of time beyond the year operated to create a cuetralt (?) lien merely, and obliterated and cancelled any supposed mechanic's lien that complainants might have
60 set up and supported; and he relies upon this fact, in addition to all others set up by him, that complainants—if they ever had any mechanic's lien—released the same by their acceptance of the mortgage and the extension of time beyond the year.

As to the trust deed executed by R. C. Daniel to J. J. Freeman, trustee, respondent believes and charges that to have been the merest subterfuge by a failing man to cover up and secure his property by conveying it to some relative and friend to hold for him, and he denies the existence and validity of any and all of the indebtedness therein referred to and attempted to be secured.

Respondent denies as a matter of fact and law that note for $1220.00 dated March 1st, 1878, due at sixty days, one for $130.00 and one $490.00, are any part or portion of the price of said compress, or can be included in any lien that complainants may establish, and respondent reserves the right to show that these matters are not liens in any sense of the term, and not proper matter to be considered where the questions of *priorite* (?) between complainants and defendants are being settled.

Respondent avers that complainants taking this trust of trust is almost conclusive proof that no such lien as they are seeking
61 to enforce was contemplated by them. That they personally know that they are entitled to no lien, as at date of the

taking of these trusts said Daniel was wholly insolvent, as complainants well knew; his paper, even small notes, had gone to protest; and, in order to protect their interests, conscious of their own weakness, and that they had no lien, they took these trust deeds, hoping that it would protect them to some degree. Their bill if efficacious for any purpose had secured their lien, their original contract with Daniel (if any in fact was ever made,) was a clean bill of sale, never reserved any lien, for the price was made at New Orleans, La., where the papers were signed, sealed, and delivered, and was entered into without reference to the laws of the state of Tennessee, or the mechanic's lien, and respondent denies that such a statutory lien can apply to contracts wholly made out of the state, as, it being statutory law, it only applies to contracts made within the state, and he here avers that the whole contract was signed, sealed, and delivered beyond the limit of the state of Tennessee, and that the mechanic's lien guaranteed to parties in this state for con-
62 tracts made in this state can have no application to contracts made wholly outside of the state.

The notes executed by defendant R. C. Daniel to various parties and now belonging to complainants, as set out in the bill, can in no event be held to be mechanics' liens, for the reason that the lien is one of personal privilege, and dies with the party doing the work, and is not transferred by endorsement or delivery.

Respondent reserves the right to show that defendant Daniel has paid or agreed to pay large sums of usurious interest to complainants, which he has the right to have abated and credited in his said debt if any really exists.

Respondent personally knows very little of the details of the bill, he admits none of its averments, and puts comp'ts to the proof of every single averment of the bill which can even in the smallest degree affect or impair his debt or security.

And now, denying all matters not specifically answered, he prays to be hence dismissed.

HUMES & POSTON,
Sol'rs for A. H. H. Dawson.

Dawson's oath waived.

63 (Endorsed:) No. 329; equity. U. S. Court at Memphis. S. B. Steers & Co. *vs.* R. C. Daniel. Answer of A. H. H. Dawson to O. A. and A. & S. bill. Filed May 23rd, 1879. Bell W. Etheridge, clerk. Humes & Poston, sol'rs.

64 Circuit Court of the United States, district of west Tennessee.

S. B. STEERS
vs.
R. C. DANIEL et al.

John J. Freeman, trustee, and complainant in the cross-bill filed in this cause on the day of , 1880, for replication to the

answer of A. H. H. Dawson to said cross-bill, traverses and takes issue upon each and every of the averments and denials in the said answer contained.

GANTT AND PATTERSON,
METCALF AND WALKER,
Sols. for Freeman.

(Endorsed:) No. 329. Circuit Court of the United States, western district of Tennessee. S. B. Steers *vs.* R. C. Daniel. Replication to Dawson's answer. Filed June 26, 1880. Bell W. Etheridge, clerk. Gantt & Patterson and Metcalf & Walker.

65 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1878, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 6th day of June, A. D. 1878, in the following cause, to wit:

A. H. H. DAWSON, plaintiff,
vs.
R. C. DANIEL, defendant. } No. 2480.

In this cause the summons, with copy of the declaration, having been served duly on the defendant on the 17th day of April, 1878, more than thirty days before the commencement of this term, and the defendant having appeared and asked for ten days to plead, and having failed to plead, answer, or demur within the ten days
66 granted, therefore, on motion of the plaintiff, a judgment by default is entered in favor of the plaintiff and against the defendant in this cause; and it is adjudged and ordered by the court that the plaintiff, A. H. H. Dawson, recover of the defendant, R. C. Daniel, the debt in his declaration claimed of ($2,946.57) two thousand nine hundred and forty-six 57-100 dollars, with the further sum of ($73.65) seventy-three 65-100 dollars interest thereon from the 6th of March, 1878, to date, amounting in all to ($3,019.22) three thousand and nineteen 22-100 dollars, together with the costs of this suit, for which let execution issue.

67 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1878, at the United States court-house,

in the city of Memphis, in said district, on, to wit, the 6th day of June, A. D. 1878, in the following cause, to wit:

A. H. H. DAWSON, plaintiff,
vs.
R. C. DANIEL, defendant. } No. 2481.

In this cause the original summons, with the copy of declaration, having been duly and legally served on the 17th day of April, 1878, more than thirty days before the commencement of this term, and the defendant having appeared and asked for ten days to plead, answer, or demur within the ten days granted; therefore, on motion by the plaintiff, judgment by default is entered in favor of the plaintiff, A. H. H. Dawson, and against the defendant, R. C.
68 Daniel, in this cause; and it is ordered and adjudged by the court that the said plaintiff recover of the said defendant the debt in the said plaintiff's declaration claimed of ($2,572.10) twenty-five hundred and seventy-two 10-100 dollars, together with the further sum of ($38.59) thirty-eight 59-100 dollars interest thereon from the 6th day of March, 1878, to date, making a total of ($2,610.69) two thousand six hundred and ten 69-100 dollars, together with the costs of this cause, for which let execution issue.

69 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1878, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 13th day of June, A. D. 1878, in the following cause, to wit:

A. H. H. DAWSON, plaintiff,
vs.
R. C. DANIEL, defendant. } No. 2480.

In this cause the application of defendant to vacate the judgment rendered herein at the present term of this court is continued to the next term of this court without prejudice to either party.

70 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1878, at the United States court-house,

in the city of Memphis, in said district, on, to wit, the 13th day of June, A. D. 1878, in the following cause, to wit:

A. H. H. DAWSON, plaintiff,
vs.
R. C. DANIEL, defendant. } No. 2481.

In this cause the application of defendant to vacate the judgment rendered herein at the present term of this court is continued to the next term of this court without prejudice to either party.

71 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its Nov. term, A. D. 1878, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 6 day of Jan'y, A. D. 1879, in the following cause, to wit:

A. H. H. DAWSON, plaintiff,
vs.
R. C. DANIEL, defendant. } No. 2480.

In this case, on due consideration by the court, and after examination of all the affidavits and exhibits filed and presented by the defendant and the plaintiff in the case No. 2480, the court is pleased to disallow the motions of the defendant in this case to set aside the judgment entered at last term, and said motions are disallowed at the costs of the defendant.

72 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

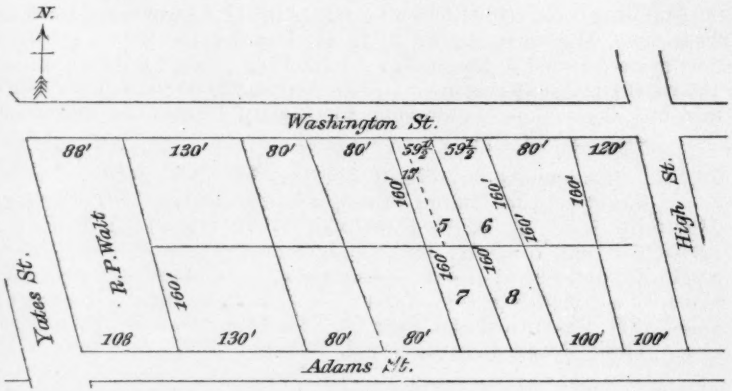
Proceedings had in said court at a regular term thereof begun and held for its Nov. term, A. D. 1878, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 6th day of Jan'y, A. D. 1879, in the following cause, to wit:

A. H. H. DAWSON, plaintiff,
vs.
R. C. DANIEL, defendant. } No. 2481.

In this case, on due consideration by the court, and after examination of all the affidavits and exhibits filed and presented by the defendant and the plaintiff in the case No. 2481, the court is pleased to disallow the motions of the defendant in this case to set aside the judgment entered at last term, and said motions are disallowed at the costs of the defendant.

of county lot 499 on the plan of Memphis, beginning at a point on the north line of Adams street, 100 feet west of the west line of High street; running thence westwardly on the line of Adams street 100 feet, more or less; thence northwardly on a line parallel to High street 148½ feet; thence eastwardly on a line parallel to Adams street 100 feet, more or less; thence southwardly 148½ feet to the beginning. Also a lot, part of county lot 499, beginning at a point on the south side of Washington street 120 feet west of High street, running thence westwardly 80 feet, more or less, to the west line of Lea's lot; thence back between lines parallel to High street, and 80 feet distant from each other, 148½ feet to an alley, public or
78 private, and being the same property leased by Jno. M. Lea to R. C. Daniel on the 1st day of January, 1878, for the period of six years. Also all the interest of R. C. Daniel in and to the chattel property in, about and upon the foregoing described lots and parcels of land, consisting of a Morse improved Tyler cotton compress, with engines, boilers, machinery, frame sheds, &c., with all appurtenances thereto belonging.

79 *Robbins's subdivision county lot* 499.



80 MEMPHIS, TENN., *July 18th*, 1880.

U. S. Circuit Court, west. dist. Tenn.

A. H. H. DAWSON *vs.* R. C. DANIEL. } Cases No. 2480 & 2481, (Law.)

To SARAH ELIZABETH BERRY and R. C. DANIEL, esq.,
Def'd't in above-entitled cases, Memphis, Tenn.

SIR: You are hereby notified that on 9th day of July, 1878, I levied execution writ upon all of the leasehold interest, and all interest of R. C. Daniel in and on the Morse improved Tyler cotton

compress, in all of which said R. C. Daniel has or may have an interest subject to levy under execution, and that on said date I took into my custody and possession all and every interest the said R. C. Daniel have or may have in the property levied upon; and you are further notified that, under executions to me issued in the above-entitled cases, and under the levy by me made thereunder, the property as levied upon is now being advertised for sale at public outcry in the Memphis Avalanche on the 18th and 25th of July and
81 1st and 8th of August, and will be sold on the 8th day of August, 1878, at 11 o'clock a. m., at and upon the premises levied upon, to wit: Lot No. 5 and 6, Robbins' subdivision, and the adjacent lots thereto on the east and south, being lot 80 x 148½ on Washington street, and lot 100 x 148½ on Adams street, all being part of county lot 499, and being the leasehold property of said R. C. Daniel, and also all his interest in the said Morse improved Tyler cotton compress, with all its attachments, appurtenances, and belongings.

This to be full and legal notice under the law.

M. T. WILLIAMSON,
U. S. Marshal, W. Dist. Tenn.

82 (Endorsed:) At Memphis, Tenn., and on 9th day July, 1878, I levied this writ upon the leasehold interest of R. C. Daniel in and to lots 5 and 6, and the adjoining lots thereto, being parts of Robbins' subdivision of county lot No. 499, in city of Memphis, Shelby county, Tennessee; also the interest of R. C. Daniel in and to the Morse improved Tyler cotton compress, with all the appurtenances and belongings, and located in and upon the said lots—all as the property of the within-named R. C. Daniel—description of levy hereunto attached and made part hereof; and on 17 July, 1878, I caused sale notice to be advertised in the Memphis Avalanche, a newspaper of general circulation in the vicinity wherein said property is located, which said notice was published for a period of more than twenty days, to wit, July 18 and 25, Aug. 1 and 8, 1878; and on 18th July, 1878, I served notice of levy, &c., upon Sarah E. Berry, occupant of the premises levied upon, and on 19 July, 1878, being unable to find said R. C. Daniel, I served notice upon said Sarah E. Berry as agent of said R. C. Daniel, and to him addressed; and I further posted notice on the premises levied upon, and in front of county court-house at Memphis.

And on 17th August, 1878, in obedience to an order of court issued by Hon. John Baxter, I return this writ without further proceedings.

M. T. WILLIAMSON,
U. S. Marshal,
By A. J. GARDNER, *Dep.*

83 The President of the United States of America to the marshal of the district of West Tennessee, greeting:

Whereas on the 8th day of February, 1879, in the United States Circuit Court for the district of west Tennessee, the same being one of the days of the November, 1878, of said court, the following order was made in the cause stated, and entered of record in the minutes of said court, to wit: A. H. H. Dawson, plaintiff, vs. R. C. Daniel, defendant, No. 2480 Came the plaintiff by attorney and moved the court for a writ of venditioni exponas in this cause; and it appearing to the court that on the 6th day of June, 1878, plaintiff recovered a judgment in this court against the defendant for the sum of three thousand and nineteen dollars and twenty-two cents debt, and twenty-six dollars and ——— cents costs, on which judgment on execution was issued and came to the hands of the marshal of the district of western dist. of Tennessee on the 5th day of July, 1878, and has been returned by him endorsed as follows: On the 9th day of July, 1878, I duly levied on the following described property, to wit: The leasehold interest of R. C. Daniel in and to lots 5 and 6 and the adjacent lots thereto, being part of Robbins's subdivision of county lot 499 in the city of Memphis, Shelby county, Tennessee; also the interest of R. C. Daniel in and to the Morse improved Tyler cotton compress, with all its appurtenances and belongings, and located in and upon the said lots; all as the property of the within-named R. C. Daniel; description of levy hereunto attached and made part hereof, and the said description is in the following words and figures, to wit:

Description of Levy.

Lots 5 and 6 of Robbins's subdivision of original county lot No. 499, lying and being in the city of Memphis, county of Shelby and state of Tennessee, each of said lots fronting 59½ feet on the south side of Washington street, and running back southwardly between parallel lines 160 feet, more or less, to the south side of the alley between Adams and Washington streets, except 15 feet on the west side of said lot 5, being the same property leased by W. Z. Mitchell to R. C. Daniel on the 7th day of January, 1878, for the period of six years, recorded in book 1, page 82, register's office of Shelby county, Tennessee. Also a certain lot of ground situate in the county of Shelby and state of Tennessee, and described as follows, to wit: Part of county lot No. 499 on the plan of Memphis, beginning at a point on north line of Adams 100 feet west of the west line of High street, running thence westwardly on the line of Adams street 100 feet, more or less; thence northwardly on a line parallel to High street 148½ feet; thence eastwardly on a line parallel to Adams street 100 feet, more or less; thence southwardly 148½ feet to the beginning. Also a lot, part of county lot 499, beginning at a point on the south side of Washington street 120 feet west of High street, running thence westwardly 80 feet, more or less, to the west line of Lea's lot; thence back between lines parallel to High street and 80

feet distant from each other 148½ feet to an alley, public or private, being the same property leased by John M. Lea to R. C. Daniel on the 1st day of January, 1878, for the period of six years; also all the interest of R. C. Daniel in and to the chattel property in, about, and upon the foregoing described lots and parcels of lands, consisting of a Morse improved Tyler cotton compress, with engines, boilers, machinery, frame sheds, etc., with all the appurtenances thereto belonging.

And it appearing further that said writs of fieri facias have been returned without any sale of the said property levied on as aforesaid, which levies this court now adjudges as still in full force and unabandoned by the marshal, and the property so levied on is still in his possession by virtue of said levies: It is therefore, on motion of plaintiff, ordered finally that said marshal, M. T. Williamson, proceed and sell said property according to law, and after advertisement and notice as provided by law, under and by virtue of said levies and this order of sale, and that a copy of this order forthwith issue to the marshal, and that a venditioni exponas issue according to law.

It is therefore ordered by the court that the clerk of this court issue to said marshal a writ of venditioni exponas commanding him, after advertising according to law, to sell said property, and make return to the next term of this court.

These are, therefore, to command you to proceed to sell said property in said order described according to law, and to have the proceeds thereof ready to render to said plaintiff for his debt, damages, and costs, and the fees hereon endorsed, at a term of said court to be held in the city of Memphis on the 4th Monday in May next, when and where you will have this writ with your return thereon.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, the 2nd Monday in February, 1879.

[SEAL.] BELL W. ETHERIDGE, *Clerk.*

Judgment June 6, 1878, for plaintiff, $3,000.19; docket fee, $10.00; clerk's fees, $12.00; marshal's fees, $4.00; clerk at term, 18 , $36.00—$3,036.19.

84 (Endorsed:) No. 2480; U. S. Circuit Court, term 18 ; A. H. H. Dawson *vs.* R. C. Daniel; vendi. exponas. Issued 10 day of Feb'y, 1879; judg't 6 day of July, 1879; $3,019.19. Returned and filed June 2, 1879. Bell W. Etheridge, clerk.

85 (Endorsement:) No. 2480; U. S. Circuit Court, ——— term, 18—; A. H. H. Dawson *vs.* R. C. Daniel; venditioni exponas; issued 10th day of February, 1879; judgment 6th day of July, 1878; 3,019.19; interest to ——; costs ——; marshal's commission ——; ———, attorney for plaintiff; returned and filed June 2nd, 1879; Bell W. Etheridge, clerk.

86 MEMPHIS.

I received the writ of venditioni exponas in this cause on the 10th day of February, 1879, and on said date I went in and upon the property defendant, and found the cotton compress situate thereon being operated by and under the management, direction and control of Charles Yerger, who claimed to be in possession of said property under and by virtue of an order of the Chancery Court of Shelby county, which placed the property in the possession and custody of R. C. Daniel, for and on behalf of the sheriff & coroner of said county. I then and there, by virtue of writ in my hands, demanded possession and control of said property, which demand was then and there refused by said Yerger. On the 11th day of February, 1879, I again went in and upon the premises, and by virtue of the writ of venditioni exponas hereto attached, and which I exhibited and explained to said Charles Yeager, and again demanded the possession, custody and control of all and every the property heretofore by me levied upon and returned to court, it being the same property described in the writ of venditioni exponas, all of which demands were denied and persistently and positively refused by said Charles Yeager; and on said 11th day of February, 1879, I reported the facts to attorneys for plaintiff in this cause, and was directed by them to proceed under said writ of venditioni exponas to a sale of said premises; and on said 11th day of February, 1879, I personally served on said R. C. Daniel, defendant herein, a notice of sale,

87 designating the time and place of sale under this vendi., for Tuesday, the 11th day of March, 1879, at 12 o'clock m., in front of the property on the south side of Washington, Memphis, Tenn.

And on the 12th day of February, 1879, Mess. Humes & Poston, for plaintiff herein, directed that all proceedings hereunder be suspended until further orders in the premises.

And on this 2nd day of June, 1879, this writ returned without further proceedings.

M. T. WILLIAMSON,
U. S. Marshal,
By A. J. GARDNER, *Dep.*

Fees, 2.00; 2 miles, 0.12; 2 days' custody, 5.00; sale notice, 0.50; notice to df't, 2.12; paid Neal, extra watchman, 2.50; paid Dwyer, oiling machinery, 5.00; com., 0.25—17.49.

88 UNITED STATES OF AMERICA,
Western district of Tennessee.

The President of the United States to the marshal said district, greeting:

You are hereby commanded, that of the goods and chattels, lands and tenements of R. C. Daniel (if to be found in your district) you cause to be made the sum of two thousand six hundred & ten dollars

and sixty-nine cents, together with thirty-four dollars and eighty cents costs, the fees hereon endorsed, which A. H. H. Dawson lately in the Circuit Court of the United States for the district aforesaid, at May term, A. D. 1878, recovered against him for debt, damages, and costs, whereof the said defendant was convicted, as appears to us of record, and have you these moneys, with interest until paid, ready to render before the judge of said court, at a court to be holden at the court-house in the city of Memphis on the fourth Monday in November, A. D. 1878, to the plaintiff for the debt, damages, and costs aforesaid.

Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, chief justice of the Supreme Court of the United States, and seal of said Circuit Court, the 5th day of July, A. D. 1878.

[L. S.] BELL W. ETHERIDGE, *Clerk.*

Judgment 6th day of June, A. D. 1878, $2,610.69; docket fee due, $10.00; clerk's fees due B. W. Etheridge, $10.80; marshal's fees due, $14.00—$34.80.

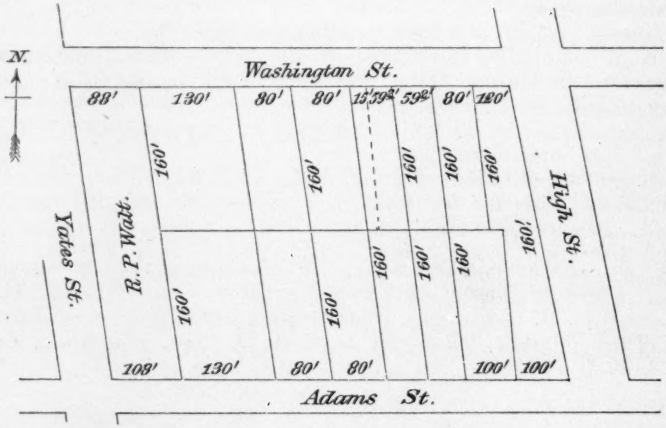
89 (Endorsed:) No. 2481; Circuit Court of the United States, western district of Tennessee; May term, 1878; A. H. H. Dawson *vs.* R. C. Daniel. Fieri facias. Issued 5th day of July, A. D. 1878. Judg't 6th day of June, A. D. 1878, $2,610.69. Costs, $34.80.

90 *Description of Levy.*

Lots 5 & 6 of Robbins' subdivision of original county lot 499, lying and being in the city of Memphis, county of Shelby and state of Tennessee, each of said lots fronting 59½ feet on the south side of Washington street and running back southwardly between parallel lines 160 feet, more or less, to the south side of the alley between Washington and Adams sts., except 15 feet on the west side of said lot No. 5, being the same property leased by W. Z. Mitchell to R. C. Daniel on the 6th day of January, 1878, for the period of six years, and recorded in book 13, page 82, register's office, Shelby county, Tenn.; also a certain lot of ground situated in the county of Shelby, state of Tennessee, and described as follows, to wit: Part of county lot 499 on the plan of Memphis, beginning at a point on the north line of Adams street 100 feet west of the west line of High street, running thence westwardly on the line of Adams street 100 feet, more or less; thence northwardly on a line parallel to High street, 148½ feet; thence eastwardly on a line parallel to Adams street 100 feet, more or less; thence southwardly 148½ feet to the beginning; also a lot, part of county lot 499, beginning at a point on the south side of Washington street 120 feet west of High street, running thence westwardly 80 feet, more or less, to the west line of Lea's lot; thence back between lines parallel to High street and 80 feet distant from each other 148 feet to an alley, public or private, and being the same

property leased by John M. Lea to R. C. Daniel on the 1st day of January, 1878, for the period of six years; also all the interest of R. C. Daniel in and to the chattel property in, about, and upon the foregoing described lots and parcels of land, consisting of a Morse improved Tyler cotton compress, with engines, boilers, machinery, frame sheds, etc., with all the appurtenances thereto belonging.

Robbins's subdivision county lot No. 499.



Service, 2; 2 miles, 0.12; ex. records & dis., 2.00; levy, 3.00; 2 notices, 4.00; notice of pub., 0.50.

U. S. Circuit Court, west. dist. Tenn.

A. H. H. DAWSON *vs.* R. C. DANIEL. } Cases 2480 and 2481, (Law.)

To R. C. DANIEL, esq., and SARAH ELIZABETH BERRY and R. C. DANIEL, esq.,

Defendants in above entitled cases.

SIR: You are hereby notified that on 9 day July, 1878, I levied execution writ upon all of the leasehold interest and all interest of R. C. Daniel in and on the Morse improved Tyler cotton compress, in all of which said R. C. Daniel has or may have an interest subject to levy under execution; and that on said date I took into my custody and possession all and every interest the said R. C. Daniel has or may have in the property levied upon; and you are further notified that under executions to me issued in the above entitled cause, and under the levy by me made thereunder, the property as levied upon is now being advertised for sale at public outcry in the Memphis Avalanche, on the 18 and 25 July and 1

and 8 August, and will be sold on the 8 day of August, 1878, at 11 o'clock a. m., at and upon the premises levied upon, to wit, lot 5 and 6 Robbins' subdivision, and the adjacent lots thereto on the east and south, being lot 80x148½ on Washington street, and lot 100x148½ on Adams street, all being part of county lot 499, and being the leasehold property of said R. C. Daniel, and also all his interest in the said Morse improved Tyler cotton compress, with all its attachments, appurtenances, and belongings.

This to be full and legal notice under the law.

M. T. WILLIAMSON,
U. S. Marshal w. dist. Tenn.

95 (Endorsed:) At Memphis, Tenn., and on 9 day of July, 1878, I levied this writ upon the leasehold interest of R. C. Daniel in and to lots 5 and 6, and the adjoining lots thereto, being parts of Robbins' subdivision of county lot No. 499 in city of Memphis, Shelby county, Tennessee; also, the interest of R. C. Daniel in and to the Morse improved Tyler cotton compress, with all the appurtenances and belongings, and located in and upon the said lots, all as the property of the within-named R. C. Daniel, description of levy hereunto attached and made part hereof; and on 17 July, 1878, I caused sale notice to be advertised in the Memphis Avalanche, a newspaper of general circulation in the vicinity wherein said property is located, which said notice was published for a period of more than twenty days, to wit, July 18 & 25, Aug. 1 & 8, 1878; and on 18 July, 1878, I served notice of levy, &c., upon Sarah E. Berry, occupant of the premises levied upon, and on 19 July, 1878, being unable to find said R. C. Daniel, I served notice upon said Sarah
96 E. Berry as agent of said R. C. Daniel, and to him addressed, and I further posted notice of the premises levied upon, and in front of county court-house at Memphis; and on 17 August, 1878, in obedience to an order of court issued by Hon. John Baxter, I return this writ without further proceedings.

M. T. WILLIAMSON,
U. S. Marshal.
By A. J. GARDNER, *Dep.*

97 The President of the United States of America to the marshal of the western district of Tennessee, greeting:

Whereas on the 8th day of February, 1879, in the United States Circuit Court for the western district of Tennessee, the same being one of the days of the November, 1878, of said court, the following order was made in the cause stated, and entered of record in the minutes of said court, to wit:

A. H. H. Dawson
vs.
R. C. Daniel. } No. 2481. Motion.

Came the plaintiff by attorney and moved the court for a writ of *venditioni exponas* in this cause; and it appearing to the court that on the 6th day of June, 1878, plaintiff recovered a judgment in this court against the defendant for the sum of two thousand six hundred and ten dollars and 69-100 cents debt, and thirty-four dollars and 80 cents costs, on which judgment an execution was issued and came to the hands of the marshal of the western district of Tennessee on the 5th day of July, 1878, and has been returned by him endorsed as follows:

On the 9th day of July, 1878, I duly levied on the following described property, to wit, the leasehold interest of R. C. Daniel in and to lots 5 and 6, and the adjacent lots thereto, being part of Robbins' subdivision of county lot 499 in the city of Memphis, Shelby county, Tennessee. Also the interest of R. C. Daniel in and to the Morse improved Tyler cotton compress, with all its appurtenances and belongings, and located in and upon said lots, all as the property of the within named R. C. Daniel; description of the levy hereto attached and made part hereof, and the said description is in the following words and figures, to wit:

Description of Levy.

Lots Nos. 5 and 6 of the Robbins subdivision of original county lot 499, lying and being in the city of Memphis, county of Shelby, and state of Tennessee, each of said lots fronting 59½ feet on the south side of Washington street, and running back southwardly between parallel lines 160 feet, more or less, to the south side of the alley between Adams and Washington streets, except 15 feet on the west side of said lot No. 5, being the same property leased by W. Z. Mitchell to R. C. Daniel on the 7th day of January, 1878, for the period or six years, recorded in book 13, page 82, register's office of Shelby county, Tennessee. Also a certain lot of ground situated in the county of Shelby and state of Tennessee, and described as follows, to wit: Part of county lot 499 on the plan of Memphis, beginning at a point on the north line of Adams street 100 feet west of the west line of High street, running thence westwardly on the line of Adams street 100 feet, more or less; thence northwardly on a line parallel to High street 148½ feet; thence eastwardly on a line parallel to Adams street 100 feet, more or less; thence southwardly 148½ feet to the beginning. Also a lot, part of county lot 499, beginning at a point on the south side of Washington street 120 feet west of High street, running thence westwardly 80 feet, more or less, to the west line of Lea's lot; thence back between lines parallel to High street and 80 feet distant from each other, 148½ feet to an alley, public or private, being the same property leased by John M. Lea to R. C. Daniel on the 1st day of January, 1878, for

98

the period of six years. Also all the interest of R. C. Daniel in and to the chattel property in, about, and upon the foregoing described lots and parcels of lands, consisting of a Morse improved Tyler cotton compress, with engines, boilers, machinery, frame sheds, &c., with all the appurtenances thereto belonging. And it appearing further that said writs of fieri facias have been returned without any sale of the said property levied on as aforesaid, which levies this court now adjudges as still in full force and unabandoned by the marshal, and the property so levied on is still in his possession by virtue of said levies:

It is therefore, on motion of the plaintiff, ordered finally that said marshal, M. T. Williamson, proceed and sell said property according to law, and after advertisement and notice as provided by law, under and by virtue of said levies and this order of sale, and that a copy of this order forthwith issue to the marshal, and that a venditioni exponas issue according to law.

98½ It is therefore ordered by the court that the clerk of this court issue to said marshal a writ of *venditioni exponas*, commanding him, after advertising according to law, to sell said property, and make return to the next term of this court.

These are, therefore, to command you to sell said property in said order described, according to law, and to have the proceeds thereof ready to render to said plaintiff for his debt, damages and costs, and the fees hereon endorsed, at a term of said court to be held in the city of Memphis on the Monday in next, when and where you will have this writ with your return thereon.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, the 2nd Monday in February, 1879.

BELL W. ETHERIDGE, *Clerk.*

Judgment June 6th, 1879, for plaintiff, $2,610.69; docket fee $10.00; clerk's fees $32.00; marshal's fees $6.12; clerk at November term, 1879.

99 (Endorsement:) Rec'd Feb'y 10, '79, @ 12.15 P. M.; No. 2481; U. S. Circuit Court, term 18—; A. H. H. Dawson *vs.* R. C. Daniel; *venditioni exponas*, issued 10 day of February, 1879; judg't 6 day of July, 1878, $2,610.69; returned and filed June 2nd, 1879. Bell W. Etheridge, clerk.

100 MEMPHIS, TENN.

I received the writ of *venditioni exponas* in this cause on the 10th day of February, 1879, and on said date I went in and upon the property defendant, and found the cotton compress situate thereon being operated by and under the management, direction, and control of Charles Yeager, who claimed to be in possession of said property under and by virtue of an order of the Chancery Court of Shelby county, which placed the property in the possession and custody of

R. C. Daniel, for and on behalf of the sheriff and coroner of said county. I then and there, by virtue of the writ in my hands, demanded possession and control of said property, which demand was then and there refused by said Yeager. On the 11th day of February, 1879, I again went in and upon the premises, and by virtue of the writ of *venditioni exponas* hereto attached, and which I exhibited and explained to said Charles Yeager, and again demanded the custody, possession, and control of all and every the property heretofore by me levied upon and returned to court, it being the same property described in said writ of *venditioni exponas*, all of which demands were denied and persistently and positively refused by said Charles Yeager. And on the 11th day of February, 1879, I reported
101 the facts to attorneys for plaintiffs in this cause, and was directed by them to proceed under said writ of *venditioni exponas* to a sale of said premises, and on said 11th day of February, 1879, I personally served on said R. C. Daniel, defendant herein, a notice of sale, designating the time and place of sale under this *vendi.* for Tuesday, the 11th day of March, 1879, @ 12 o'clock M., in front of the property, on the south side of Washington street, Memphis, Tenn.

And on the 12th day of February, 1879, Messrs. Humes and Poston, attorneys for plaintiffs, herein directed that all proceedings hereunder be suspended until further orders in the premises.

And on the 2d day June, 1879, this writ returned without further proceedings.

M. T. WILLIAMSON, *U. S. Marshal,*
By A. J. GARDNER, *Dept.*

Serv. & 2 m., $2.12; 2 days, $5; sale notice, $0.50; notice on d'f'd't, $2.12; Neal—custody, $2.50; Dwyer, $5; com., $0.25—$17.49.

102 *Depo. H. C. Warinner.*

Q. 1. State your residence and profession.

A. I live in Memphis, Tenn., and am a lawyer by profession.

Q. 2. Were you counsel for either, and which, of the parties to this suit?

A. I was counsel for the complainants, S. B. Steers & Co., in the original bill. I prepared and drafted the original bill and the amended and supplemental bill.

Q. 4. Look at the return by the coroner of Shelby county of the writ of attachment issued by the Chancery Court of Shelby county under the original bill in this cause, which return you will find at page 49 of the transcript from the state court, and state in whose possession the compress property was just prior to the said action by the coroner of Shelby county. And state whether anything, and what, occurred between you and the marshal of this court with reference to the marshal's possession of said property and his withdrawal therefrom. State fully all the facts with respect thereto.

A. I have looked at the coroner's return on page 49, and state that up to 11 o'clock that day the property was in possession of
103 M. T. Williamson, U. S. marshal for this district, under some execution or other process issued from the U. S. Circuit Court of this district. My recollection is that he showed me the process prior to the date of the return of the coroner. At all events he claimed to hold possession of said property, and had advertised it for sale. I was quite particular about this property, for the reason that the fiat of the chancellor in the state court directed the sheriff in executing the attachment not to interfere with the possession of the marshal of the U. S. court as long as he held possession. I had procured an injunction against the proposed sale of the marshal, but just before the date of the proposed sale by the marshal some question had arisen as to the validity or regularity of the legal proceedings upon which the execution in his hands was based, and I anticipated that perhaps an injunction would be unnecessary. I saw Gen'l Williamson at least twice, if not oftener, before noon of the 8th of August, 1878; the first time I saw him about the matter was several days before the date of the proposed sale, and, in view of the questions raised about his
104 process, asked him whether or not he would make the sale. He stated substantially that he did not know what would be done as yet. I saw him likewise on the morning of the 8th of August, 1878, and enquired further about it, intending to have the injunction served if the sale were persisted in. I explained to Gen'l Williamson at that time, and on an occasion before that time, the grounds upon which I, as counsel, had an interest in the proposed sale. I stated to him that I had filed a bill in the state court and had procured a writ of attachment, but was directed not to interfere with the possession of the marshal; that I would cause the attachment to be levied on the property just as soon as his possession was removed. Gen'l Williamson replied that the counsel for the execution creditor was considering the matter, and he would see him or them and let me know by 11 o'clock a. m. what would be done. This conversation took place at the court-house; shortly after I returned to my office on Madison street, and either in going, or shortly after, in coming out of my office, I met Gen'l Williamson on the sidewalk between my office and the northwest corner of Main and Madison streets, and he stated, I think, in this precise language,
105 "I have removed my watchman; you can take the property and do what you please with it."

I notified the coroner immediately, and the attachment of the complainants was levied on the same day and immediately thereafter.

Q. 5. Who had possession of the property from that time forth?

A. I can't answer of my personal knowledge, and could only state what the records show.

Q. 6. Was Williamson, the U. S. marshal, aware at the time he told you to take the property and do what you please with it, that you had a writ of attachment from the state court which you in-

tended to levy as soon as you could properly do so without interfering with the process of this court?

A. He certainly was because I told him that morning, and I think before. The reason I was anxious to know the steps he would take, and I remember using an expression of this kind in the hallway near his office: "The reasons I wish to know, Gen'l W., and I state them frankly, that I have an attachment from the state court which
106 I wish to have levied on his property, but I don't wish to disturb or interfere with your possession."

Q. 7. Did you about the time the said writ of attachment was issued notify the U. S. marshal that the writ was out, and ask him to keep you informed of whatever he, the said marshal, might do, informing him at the same time that your reason for making the request that you might cause the writ of attachment to be levied whenever it could properly be done?

A. Such is my recollection. The writ was issued, I think, about the latter part of July or the first days of August; and I am quite positive that I gave him full reasons why I wished to be kept informed. Reflecting upon the subject, I remember speaking to Gen'l Williamson several times before the 8th of August about this matmer.

Cross-examination:

Q. 1. Was not the first conversation you had with the marshal about the abandonment of the levy had on the 7th of August in his the marshal's, office?

A. I think not, but cannot at this date be positive. I
107 don't remember ever having spoken of it in technical language of "abandonment of a levy," though then believing it to be personal property. I supposed that abandonment of possession would amount to that in legal effect, and my opinion of the law was the guide of my conduct in the affair.

(Counsel for Dawson objects to the above answer of the witness as being the opinion of the witness and not called for by the interrogatory.)

Q. 2. Did you have any talk with Gen'l Williamson about abandoning the levy until the letter of Judge Baxter to Gantt & Patterson reached Memphis?

A. My recollection is that I did—not using the legal term of "abandonment of a levy," because Judge Baxter's letter was not the basis of my judgment as to the invalidity of the proceedings. I think I told Gen'l Williamson prior the receipt of Baxter's letter that if he made the sale under the circumstances he would make it at his peril.

Q. 3. Did you ever request him to abandon his levy before the arrival of Baxter's letter?

108 A. I never *asked* him abandon his levy at any time; that was a matter I left to his own decision.

Q. 4. Did you not on the 7th of August, 1878, call on him at his office, and ask him whether now, in obedience to Judge Baxter's

letter, he was not going to abandon his levies, and did he not reply in the conversation: "I do not intend to abandon the levies, but I will see the plaintiffs' counsel as to withdrawing the watchman, and inform you"?

A. I remember that as soon as I learned of the arrival of Judge Baxter's letter to the clerk I came to the clerk's office to see the letter. I had been advised before that time of the proceedings instituted by Daniels for severe relief in regard to this execution, and had expected some communication would be received from Judge Baxter on the subject. I remember of being in the clerk's office on the morning of the same day, and a day or two prior to the 8th of August, and saw Judge Baxter's letter either in the clerk's or
109 marshal's office; any how I saw the clerk first, and then went to see the marshal. I don't remember of using the expression in the precise language presented in the question, but I asked the marshal if he would abandon his levies or possession, using either one term or the other—I think latter—possibly both, during *during* the conversation. I am quite certain that Gen'l Williamson did not say that he did not intend to abandon his levies; on the contrary, he stated he wanted to act properly in the matter, and he would not assume the responsibility of determining the question, and said he would consult counsel about it. He said he would see Dawson's counsel, but whether he said he would see his own counsel I don't remember.

Q. 5. Are you not mistaken as to the place at which occurred the conversation between the marshal and you, which you locate as occurring between Main and Front streets; and, in fact, did it not occur in your office, the marshal going there to see you?

A. I have no recollection of him in my office that day. I
110 do distinctly recollect of seeing him at the court house and near the corner of Main and Madison sts., and speaking about this matter on both occasions; and if I saw him in my office in connection with it, then I saw him three times that morning. His statement in regard to removing his watchman, &c., was made in our last meeting on that day, wherever it was.

Q. 6. In that interview on the corner of Main and Madison, or in your office, did he not say, "I have my watchman removed by 11 o'clock"?

A. My recollection is as I have already stated it.

Q. 7. Did you not know on the 8th that the marshal had made a regular return of his levies and fi. fa. in writing on the 7th.

A. If I knew it at all on the 8th my recellection is that it was after the levy of my attachment; but I don't think I knew of or saw the returns on the 8th, or prior thereto.

And further this deponent saith not.

H. C. WARINNER.

111 *M. T. Williamson.*

I am the United States marshal who made the levies in 2480 and 2481, of A. H. H. Dawson *vs.* R. C. Daniel, on the 9th day of July, 1878.

Question 1. Please state minutely and accurately the conversations and interviews that occurred between you and Capt. Warriner about these levies.

Answer. Prior to the 7th of August, 1878, Mr. Warriner had spoken to me several times about the executions I held in these cases. These conversations I do not distinctly remember, but they were to the effect as to whether the sale would be proceeded with. On the evening of the 7th day of August Mr. Warriner came into my office, after the order of the clerk had been received based on Judge Baxter's letter ordering me to return the execution, and requested that, in obedience to that order and letter, that I should return the execution and abandon the levies. He stated that he could at any time have enjoined me, and, as I understood him, the injunction had been granted, but the (?) he
112 *he* did not wish to have it served. He did not show me any papers, but stated to me that he had an attachment which he wanted served on the property. In the course of the conversation I stated that I did not see how I could abandon the levy, and asked him if my withdrawing the watchman would not answer his purpose. He replied that he really didn't know whether it would or not. I either intimated or stated that that was all I wanted to do, and desired to see Messrs. Humes & Poston and get their consent to do that. He urged to me that I was a trespasser by holding possession any longer. I then called his attention to the fact that my watchman was still there, and asked him if he wanted him withdrawn immediately. He said that he did not, and requested that the watchman be retained till next morning. Early in the morning of the 8 day of August, 1878, Mr. Warriner again called at the office, and we had further conversation, in which he made no claim about the abandonment of the levy. I think I told him that I had seen or would see Messrs. Humes & Poston, and that I would notify him at what
113 hour the watchman would be withdrawn. Later in the morning, and I think about ten or half-past ten o'clock, I saw him in his office, and said to him, according to my promise, I call to say that the watchman would be removed at 11 o'clock a. m.

Q. 2. Did you in that conversation, or any other of that day, say to him that he could do what he pleased with the property?

A. I certainly have no recollection of using any such language.

Q. 3. Have you any reasons, if yea, give them, why you did not make such remark?

A. I have reasons. On the receipt of this order for the return of this execution—based on Judge Baxter's letter—I saw David Poston at his office and showed him the papers, and asked him what I should do about withdrawing the watchman. He authorized me to withdraw the watchman, and stated that there was a decision that

leasehold property for purposes of a levy was regarded as real estate, and that a withdrawing of a watchman and would not abandon the levy, and that he did not want me to abandon the levies. A
114 further reason is this: if the executions under which I made the levies were void and illegally issued, I had no levy to abandon, but if they were legally issued and valid, I had no right to abandon the levies, and desired to act in such a manner that the legality or illegality of the executions and levies should be determined by the court.

Q. 4. When you withdrew your watchman on Aug. 8, '78, at 11 o'clock a. m., was there any one there to take possession of the property in the interest of Mr. Warriner, or his clients, S. B. Steers & Co., under their attachment?

A. There was not.

Q. 5. Have you read the deposition of R. C. Daniel on file in this cause; if so, did you ever have the conversation with him detailed therein?

A. I have not read the deposition of R. C. Daniel, but Gen'l Humes called my attention to a portion of it, in which Mr. Daniel stated that I had said to him that I had *abandoned* the levies. I have this to say, that I never made such a remark to him or any one else.

Q. 6. For what purpose did you place a watchman there?

A. I placed a watchman there at the request of Mr. D. H.
115 Poston to watch and protect the property, and he guaranteed the expenses of it should be paid. I would not have placed a watchman there had not Mr. Poston guaranteed the payment of it.

Q. 7. Were the buildings, improvements, cotton compress, engines, &c., lying loose on the surface of the ground, or attached to it as fixtures?

A. The buildings, which consisted of two rooms, had been erected on the ground like any other house, and were being occupied. The furnaces had been erected by digging out the soil to the depth of 30 inches, and then were built over with brick and mortar, and like furnaces are generally attached. These furnaces were connected with the engines, and the engines with the compress in a good, substantial manner, and the compress seemed embedded in the ground with good foundation and apparently in good running order. From my observation the smoke-stack ran up through the roof of the shed. The returns, as shown on the executions Nos. 2480 and 2481, were written out by my dep., Gardner, under my instructions, and show-
116 true and correct account of my proceedings thereunder, and are made exhibits hereto.

Cross-examination:

Q. 1. The conclusion of each of your said returns in Nos. 2480 and 2481, of which return you have just spoken, is as follows: "And on 7th August, 1878, in obedience to an order of court issued by

Hon. John Baxter, I return this writ without further proceedings hereunder." Please state what order of court is here referred, and make same or copy thereof a part of your deposition.

A. I refer to papers which I have marked Exhibit "C," issued by the clerk of the court with a copy of Judge Baxter's letter attached.

Q. 2. What did you mean by the expression at the close of your returns—"without further proceedings hereunder"?

A. I meant that the property was advertised to be sold on the 8th day of August at 12 o'clock, and that under the paper issued to me I could not make the sale, and it was my duty to return
117 the executions to the court, with a statement of facts as to all that had been done by me under the executions, and to obey the subsequent orders of the court.

Q. 3. Did you mean to conform your actions under said writs of fi. fa. to the opinion of Judge Baxter, as expressed in the copy of his letter, and to the said order of the clerk of the court to return said writs unexecuted for the reason that they were issued without authority?

(Counsel for Dawson objects to this and the foregoing question, because they ask for the judicial construction of the marshal's returns.)

A. I returned said executions because of the papers received, and because David H. Poston, to whom I showed the papers, instructed me to withdraw the watchman, obey the writ, and not proceed with the sale. In returning the papers I did not presume to pass upon the legality of the writs, but desired simply to report what I had done, and to leave the legality or the illegality of the writs and the levies thereunder to be determined by the court. I did not consider the letter of Judge Baxter conclusive upon the subject, but I did consider that the order of the clerk had to be obeyed.
118 (Counsel for Dawson makes the same application to this answer as is made to the question.)

Q. 4. When you made said levies were you not instructed by Mess. Humes & Poston to take actual possession of said property, and did you not, by the means of the watchman put in charge of it by you, take actual possession thereof, and continue to hold actual possession thereof until you withdrew your watchman?

A. I don't know that I was instructed by Humes & Poston to place a watchman in charge, but they thought it best and consented to a watchman being placed in charge of the property, and on making the levies I took a watchman with me, levied upon the property, and left the watchman in charge of the property until the 8th day of August, when I removed him. While the watchman was there I was in actual possession under the levies. I don't remember any instructions from Humes & Poston that a watchman was necessary to effect the levy, but my idea was that the watchman was to take care of and protect the property, the damage mostly to be
119 apprehended being from fire.

(Counsel for Dawson object to this question and answer,

because the legal effect of a levy on property can not be altered, nor the return effected by the marshal's placing a watchman over the property.)

Q. 8. Did you consider the said property so levied upon by you realty or personalty? If you considered part realty and part personalty, specify what class.

(Dawson's counsel objects to this question as incompetent and irrelevant.)

A. I don't remember to have classified it as either real or personal property, except that in my description of the levy the word chattel property is used, but that was done without consideration or knowledge whether it was absolutely chattel property or not.

Q. 9. When you made said levies did you consider it necessary or probably necessary to the validity thereof that you should take possession of the property or any part of the property levied on?

120 (Dawson's counsel objects to this as wholly irrelevant and incompetent to vary the levy as made.)

A. I did not know the condition of the property until after it had been determined to place a watchman in charge by Mr. Poston and myself, and until I visited the property for the purpose of making the levy. I may first have thought, without pretending to know the law, that a watchman was necessary; but at this time I do not recollect of any impression I may have had upon the subject at the time, as Mr. Poston did not controvert the propriety of having a watchman. After seeing the property I was satisfied in my own mind that the greatest danger to be apprehended was from fire. The question of the necessity of placing a watchman in charge of the property to perfect my levy never arose in my mind either way. I knew it could not be stolen, but apprehended danger from fire.

Q. 10. Do you not know that to make a valid levy on personalty it is necessary to take possession?

121 (Dawson's counsel objects to this because it is a question of law, and he knows the law to be other way.)

A. As a ground rule, I think this is so. There may be exceptions, but I do not undertake to state them.

Q. 11. How then did you determine the question whether or not you must take possession of this property in order to make a valid levy upon it?

A. On the levy being furnished by Mr. Poston I asked him about placing a watchman in charge, and he consented. Outside of making the levy, writing it out on the executions, and placing the watchman in charge, I don't know that I did anything else.

Q. 12. If you have not stated the date you removed the watchman, please state it now?

A. On the 8th August, 1878, at 11 o'clock a. m., to the best of my recollection.

Q. 13. Did you then or there, and at the time you had one or more interviews with Mr. Warriner, on Aug. 8, 1878, know that Mr. Warriner, as attorney, had control of a writ of attachment from the state

court which he intended to cause to be levied upon the same
122 property that you had levied on whenever you withdrew from the possession of the property?

(Dawson's counsel objects to the above question because it assumes that witness has testified that he had withdrawn from the possession of the property, which he has persistently denied, whereupon the question was for the time withdrawn.)

Q. 14. Did you take possession of said property at the time of making your said levies, or at any time prior to the 8th Aug., 1878?

(Counsel for Dawson objects to this question as an attempt to have the witness define legally the effect of his conduct in making the levy, and because he has already stated repeatedly the exact acts, the time, place and circumstances which he did in making the levy and taking possession.)

A. On the 9th July, 1878, I levied writs of fieri facias on the property, as shown by my returns, and left the watchman in charge of the property; that is all the taking *taking* possession that I did.

Q. 15. Was the watchman you put in charge of the prop-
123 erty in exclusive charge of it from the time you put him there until you withdrew him?

(Dawson's counsel objects because it asks the marshal if he did an act of surrendering his legal control and possession as marshal to a mere watchman.)

A. He was at all times subject to my orders and directions, and had charge of the care and protection of the property, and *and* was instructed to prevent depredations and against damage by fire.

Q. 16. (Counsel for Freeman, trustee, repeats the question and ask an answer. Counsel for Dawson objects to a repetition of question and asks a reference of the same by the commissioner to the court.)

A. There was a Mrs. Berry and her children occupying the two rooms on the property, but outside of the two rooms they had no control of the property and only had control of her own personal property and effects in their rooms.

Q. 17. You are now again asked to say whether or not you took possession of the whole or any part of said property when you made your said levies, or at any time prior to Aug. 8th, 1878?

124 (Counsel for Dawson objects to this question because it has already been put to and answered by the witness stating fully and minutely the acts he did in making the levy, and whether they constitute the taking possession is a question of law for the court and not for the witness. The return cannot be attacked in this collateral way.)

A. I am at loss to know what is meant by the word possession, or taking possession. If it is not covered by my returns on the writs, I can only state that I took no other possession than is specified on the writs—making the levy and placing the watchman in control of the property. I can testify to no other act by which I took it under control.

Q. 18. Did you consider or intend by your said acts to take possession of said property?

(Dawson's counsel objects to above question as incompetent, because it is an attempt to control the acts of an officer in serving or executing a judicial writ by his private opinion and secret intention. The only legal evidence of his intention, the return and the acts he did.)

A. I intended to execute the writs and thought that by the levy and placing a watchman in charge that up to the return of
125 the writs that I had control of the property in order to obey the process. My possession was no other than such officer entrusted with the process.

Q. 19. The question is repeated and an answer again asked.

(Counsel for Dawson objects because question has been heretofore fully answered.)

A. I intended by the levy to levy upon the property as described, which, in cases of levy on real estate, is constructive possession in my opinion. I had no doubt by placing a watchman there was taking actual possession.

(Objected to by the counsel for Dawson for the same reason given to the original question.)

Q. 20. How long did you remain or consider that you remained in actual possession of said property?

(Objected to for the same reason as that given in the prior question and answer.)

A. I consider that I was in actual possession and control of the property until I withdrew the watchman on the 8th day of August, 1878, or until the return of the process under which I was
126 acting. I consider that after my return of the process I had no personal control over the property.

(Dawson's counsel object to the answer as being a private opinion of the officer attempted to be used to control the legal effect of the levies and returns.)

Q. 21. Did you know on Aug. 8th, 1878, when you withdrew your watchman and notified Warriner that you had withdrawn him, that Warriner had control of a writ of attachment from the state court which he intended to cause to be levied whenever notified by you that you had withdrawn from the actual possession of said property?

(Objected to as irrelevant and incompetent.)

A. Mr. Warriner informed me that he had an attachment from the state court which he wanted to serve upon the property and wanted me to abandon my levies to enable him to do so. I declined to abandon the levies and asked him if withdrawing my watchman would answer his purpose; the question of abandoning the levies was not again raised, and I agreed to notify him when I withdrew my watchman.

x-q. 22. Had you any actual possession of said property
127 after you withdrew your watchman therefrom on the 8th of August, 1878?

A. I do not consider that I had actual possession of the property after I withdrew the watchman and did not claim to have actual possession, and did not believe I had the right to prevent the levy of other process.

(Counsel for Dawson object to the above question and answer because it seeks to put in proof the private opinion of the marshal as to the legal effect of his acts under the process of the court.)

Q. 23. What do you mean by saying, as you have just said, that you did not believe that you had the right to prevent the levy of other process?

A. I mean that as I had not actual possession I could not forcibly resist any other officer going upon the property and levying other process, particularly as I had directed that the writs of "fieri facias" should be returned with my endorsement of proceedings thereunder, which I thought and intended should be notice to all parties as to what I had done, and it was for them to judge whether subsequent process should be levied or not.

(Counsel for Dawson objects to the above question in the same manner as to the previous question.)

128 Q. 24. When you said to Mr. Warriner, as you have just testified, that you would withdraw your watchman and asked him if that would answer his purpose, did you refer to his purpose to levy his said writ of attachment from the state court?

(Dawson's counsel objects to the above question as incompetent and irrelevant.)

A. Yes, sir.

Re-examination:

Q. 1st. State accurately and fully the acts which you did in making levies under *fi. fa.* 2480 & 2481, with time, manner and place of doing the same?

A. On the 9th day of July, 1878, I went on the premises and levied the *fi. fas.* on the property described in my return, and notified a Mrs. Berry, who was occupying property, that I had made the levies and left the property in charge of the watchman, who I took with me for the purpose. There was present David H. Poston, J. W. Ramsey, and W. H. Neal.

Q. 2. The counsel for Dawson puts the following question, at the same time reserving his objections to the competency of such proof, and only asks the question in rebuttal and explanation of similar questions put by opposing counsel:

Did you or not put the watchman in charge to protect the
129 property from depredation and fire, and not to complete your possession under the levy; or, in other words, was it or not without reference to the perfection of your levy or its completion?

A. The question as to the necessity of a watchman or keeper to perfect my levies did not occur to my mind. On receiving the executions, and before seeing the property, I asked Mr. Poston if a watchman would be required; my recollection is that he said to pro-

vide one, which I agreed to do on his agreeing to be responsible for the expenses and fees of the watchman. I state this as a reason for saying that the necessity of a watchman to perfect the levy did not arise in my mind. On going upon the property I found it enclosed, and deemed it necessary to place the watchman in charge to prevent depredations and damages by fire.

Q. 3. Subject to the same reservation, counsel puts the following question: When you make a levy on personal property do you consider it necessary in order to protect your possession that you should put a watchman or any one else in charge of the property?

A. In levying on movable personal property I cannot decide the legal effect of the levy, but I would place it in the custody or
130 possession of a custodian to protect myself under the writ; I do consider it necessary in order to take actual possession of the property. I may be mistaken as to this. I pretend to decide or know what constructive possession attaches to a levy under a writ.

Q. 4. With the same reservation counsel puts the following: By your return of the 7th of August, 1878, did you intend or not simply to suspend further proceedings under the levies, and the court thereby the legal status of the property under the levy for further orders of the court, or did you intend thereby to abandon the property, and release it from the effect and operation of the levies you had made there?

(Objected to as leading.)

A. To the first branch of the question I answer that my intention was to suspend further proceedings and leave the legality of the proceedings to be determined by the court. I did not intend to abandon the levies, but to let them stand, and abide the decision of the court in the legality or illegality of the executions. I did not intend to abandon the property and release it from the effect and operation of the levies, if the court sustained the validity of the issues of the executions.

131 Q. 5. Do you consider, when you return an execution that has been regularly levied on personal property, such return being made before sale of the property, that by such return you cease to have personal control of the property thus levied upon?

A. I don't know how to answer the question. My ideas are that the case now under consideration, the writs having been returned by an order of court, the watchman withdrawn by consent of counsel, that I had no longer personal control of the property.

Q. 6. Where did you think the control of the property under the levies had passed?

A. Well, I s hould say it went with my writs to the court, and it was for the court to say what further proceedings should be had in the premises.

And further this deponent saith not.

M. T. WILLIAMSON.

132 1st q. Please state what occurred between the marshal, M. T. Williamson, when the levies were made in Nos. 2480 and 2481, as to the appointment of a watchman; then state what occurred in reference to the letter of Judge Baxter, the order of the clerk, and the return of the levies dated 7th Aug., 1878.

A. I, representing A. H. H. Dawson, caused the clerk to issue the executions in the two Dawson cases, and took same to the marshal and gave same to him, with instructions to levy the same upon the cotton compress, leasehold buildings, &c. At the marshal's instance and request I got a description of the property, the leasehold, and gave it to him with instructions to at once make the levy. I said to him he had better carry out a watchman and put him in possession of the property. I had previously gone out to the property and found no one in charge except a white woman, who had a house in the building—or shed probably—an old house that had been covered by the shed. When I said to Williamson to put a watchman in possession he asked me about the costs and expense of such
133 watchman, and I told him I would see it paid. Soon after this, or at least about the date of Judge Baxter's singular letter, Williamson came to me and said that Judge Baxter had written a letter that recalled the executions, and showed to me, as I now remember it, a copy; or it may be that I saw it in the hands or office of the clerk of the court. He asked me what he was to do, and I said to him that if he abandoned the levy his bond would be good to us; that he had better consult a lawyer if he had one. I told him, as I now remember it, that I would correspond with Judge Baxter and ask him to recall his letter; but afterwards, in another interview with him, he said he would simply return his executions as levied, for the court to act and decide upon the questions; that he was in a bad predicament—did not know what to do. I positively refused to advise Gen'l Williamson, but notified him if he released his levy we would look to him and his bond as marshal for indemnity.

Q. 2. For what reason did you instruct him to put a watchman on the property?

134 A. I had been informed by the woman that there was a man there who was not there when I went out the first time. I saw the property; it was a large shed, covering a large area, and as the owner had a party there to take care and protect it, I thought it prudent to do the same thing; this was the sole reason, as I now remember it. The woman told me the press and property had a regular watchman, and as it was not being operated, and the whole thing wood, I thought it prudence at least to have a man in charge to protect it as the owner was doing.

Cross-examination:

Q 1. Do you mean that you did not advise the marshal to put a watchman in charge of the property with a view to take and hold possession in order to the validity of the levies and the maintenance thereof?

A. The question as a matter of fact was not discussed between the marshal and myself. My recollection is that when I
135 called upon the marshal to make the levy he said, what about a watchman? And I told him he had better bring one and put him in possession. The question about a day and night watchman was discussed, and I told him the property must be protected day and night. I don't think the question as to actual possession or the necessity of his taking manual possession was ever discussed; if it was, I have no recollection of any such conversation.

Q. 2. When you say in your direct-examination that after the arrival of Judge Baxter's letter, and the order of the clerk consequent thereon, the marshal was "in a dilemma," do you not mean to say that his difficulty was that if he maintained his possession he was in danger of being sued by the owners for a trespass, and if, on the other hand, he abandoned the possession he was in danger of liability to Dawson?

A. I do. D. H. POSTON.

136 (Endorsed:) No. 329; Circuit Court of the United States, western district of Tennessee; S. B. Steers *vs.* R. C. Daniel; deposition of M. T. Williamson, D. H. Poston, H. C. Warriner; filed June 29th, 1880; Bell W. Etheridge, clerk; W. B. Weisiger, dep. clerk.

137 *Exhibit "C."*

The following five papers are Exhibits "C" to M. T. Williamson's deposition:

KNOXVILLE, TENN., *Aug.* 5, 1878.

MESS. GANTT & PATTERSON,
Attorneys at Law, Memphis, Tenn.

GENTLEMEN: Behold! what labor, trouble, expense, and injustice a little neglect occasioneth. And then your application comes in such a questionable and unique shape.

It is difficult to name or classify it. It is not a bill in chancery, nor is it an application for any other specific relief, through any defined process known to the practice of the court, but a general statement of a threatened injustice accompanied with a prayer for such relief as I may think just and appropriate. Well, you make, I think, a pretty good case on the merits, and if the relief suggested in the enclosed letter to Mr. Etheridge cannot be made available, and you will prepare a bill in regular form containing proper averments and give an opportunity, by notice, to the opposing party, and no good reason is shown against it, I will grant you an injunc-
138 tion and stay proceedings until the merits of the case can be enquired into and be adjudicated. But I think your application to set aside judgment by default, in connection with the order to continue it till the next term, has in law the effect to suspend the

judgment in favor of plaintiff and continue the cause upon the docket. If this idea is correct, then the executions were issued without authority, and ought to be recalled from the hands of the marshal. This is the cheapest mode of correcting the wrong, and, I presume, give your client all he wants.

It strikes me that if the executions are not recalled that the clerk will be liable to an action for issuing them, and the marshal, after notice of their unauthorized issuance, be liable for executing them.

With many good wishes, I am truly yours,

JNO. BAXTER.

MESSRS. GANTT & PATTERSON, *Memphis, Tennessee.*

Exhibit "C."

139 KNOXVILLE, TENN., *Aug. 5th*, 1878.

MY DEAR SIR: I have been furnished by Mess. Gantt & Patterson, att'ys for Mr. R. C. Daniel, with certified copies of the record in the suits of A. H. H. Dawson *vs.* Daniel, pending in your court. From this, as I construe it, judgments by default were rendered at the last term, and then an application made to set aside said judgments and permit defendant to plead, which application was continued to next term of the court. This leaves these cases pending and undetermined. Yet Messrs. Gantt & Patterson, for their client, represent that executions have been issued and levied on Daniel's property. If this is so the executions are without authority and ought to be called in as imprudently issued. There is no final judgment on which they can rest. My suggestion is that you issue a paper to the marshal reciting the fact that executions were issued without authority, and request him to return the same unexecuted.

I am, very truly, &c.,

JNO. BAXTER.

BELL W. ETHERIDGE, esq.,
U. S. Circuit Clerk, Memphis, Tenn.

140 *Exhibit "C."*

Circuit Court of the United States, western district of Tennessee.

A. H. H. DAWSON *vs.* R. C. DANIEL. } No. 2480.

A. H. H. DAWSON *vs.* R. C. DANIEL. } No. 2481.

To the United States marshal, western district of Tennessee:

In accordance with the instructions of Judge Baxter, communicated by letter, a copy of which is hereto attached, I notify you that

the executions issued in the two above named cases were issued without authority, and request you to return the same unexecuted.

You will therefore act accordingly.

Witness my signature and the seal of said court, this the seventh day of August, 1878.

[SEAL.] BELL W. ETHERIDGE, *Clerk.*
H. E. ANDREWS, *D. C.*

141 *Exhibit "C."*

U. S. Circuit Court, west. dist. Tenn.

A. H. H. DAWSON *vs.* R. C. DANIEL. } 2480, 2481. Law.

MEMPHIS, TENN., *Jan.* 18, 1879.

On the day I made the levy on property of R. C. Daniel, as shown by my returns on the executions in the above-entitled cases, I placed *in* keeper and watchman in charge of the property and continued them in charge until the 7th or 8th day of August, 1878, on which day I returned the execution by order of court hereto annexed, withdrew said keeper and watchman, and suspended further proceedings under said executions.

This statement is made at the request of George Gantt, esq., attorney for defendant, who represents to me that D. H. Poston, esq., attorney for plaintiff, consents to the same in lieu of taking my deposition.

M. T. WILLIAMSON,
U. S. Marshal.

142 *Exhibit "C."*

[Copy.] KNOXVILLE, TENN., *Aug.* 5, 1878.

MY DEAR SIR: I have been furnished by Mess. Gantt & Patterson, att'ys for Mr. R. C. Daniel, with certified copies of the records in the suits of A. H. H. Dawson *vs.* Daniel, pending in your court. From this, as I construe it, judgments by default were rendered at the last term, and then an application made to set said judgments aside and permit def'd't to plead, which application was continued to next term of the court. This leaves these cases pending and undetermined. Yet Mess. Gantt & Patterson, for their client, represent that executions have been issued and levied on Daniel's property. If this is so the executions are without authority, and ought to be called in as improvidently issued. There is no final judg't on which they can rest. My suggestion is that you issue a paper to the marshal reciting the fact that the executions were issued without authority, and request him to return same unexecuted.

I am, very truly, &c.,

JNO. BAXTER.

BELL W. ETHERIDGE, esq.,
U. S. Circuit Clerk, Memphis, Tenn.

143 *Wrapper to Exhibit "C."*

Nos. 2480 and 2481.—U. S. Circuit Court, western district of Tennessee.

A. H. H. DAWSON
vs.
R. C. DANIEL.

Notices to marshal to return executions. Received by marshal at 5:15 p. m. on 7th August, 1878.

144 In the Circuit Court of the United States for the western district of Tennessee.

RICH'D C. DANIEL, S. HIGGINS CRAIG, ELEANDER E. LORRY et al.
vs.
A. H. H. DAWSON, J. J. FREEMAN, trustee, S. B. STEERS, & E. L. MORSE, partners, &c., and others.
} In equity.

For complainant.

Interrogatories to be propounded to F. S. Handy.

1. State whether or not you are a relation of R'd C. Daniel; if yea, what is that relationship?

2. State whether or not there was left by you with Rich'd C. Daniel any money or monies at any time; if yea, was it yours? how did it come to you? what was the amount? and detail all the circumstances in connection with it.

3. State if you know anything of a cotton compress that Rich'd C. Daniel built or contracted to be built, and as detailed in the pleadings, and whether or not you owned any interest in the same; state all you know about the matter, if you know anything.

145 5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or matters in question in this cause? If yea, set forth the same fully and at large in your answer.

GEORGE GANTT AND
WM. S. FLIPPIN,
Sols. for Compl'ts.

Cross-examination by Humes and Poston for A. H. H. Dawson:

x-q. 1. Are you not a sister of R. C. Daniel, of Memphis, a party def't hereto?

x-q. 2. Is your husband still alive?

x-q. 3. Have you a separate estate? If so, how, where and from from what source derived? If in writing, produce and file a copy. If by will, file a true certified copy.

x-q. 4. Have you any note or other evidence of any indebtedness due by R. C. Daniel to you? If so, produce and file same, and if more than one, file all you have.

x-q. 5. The cross-bill in this cause purports to set forth that on Octo. 1, 1878, you loaned to R. C. Daniel $1,000. Was this the true date of the loan by you?

x-q. 6. What security was given to you at the time of the
146 loan, and if you have any written evidence of such security, produce it?

x-q. 7. If you produce any written evidence, will you then testify on oath that it was actually given at the date of the loan?

x-q. 8. Was the loan (if any in fact was made) made on the personal application of Daniel? If not, and the application was in writing, file same as in Exhibit No. 1.

x-q. 9. Did you hand him the money in person, or was it sent to him by express, or by check or draft on any bank? If by express, what co., and the date of shipment. If by draft or check on any bank, by whom drawn, what bank, and where situated?

x-q. 10. If you pretend to say that you and said Daniel ever had any agreement about the money being invested in a cotton compress at Memphis, was this had before or after the loan, and was such agreement in writing? If yea, please file same as Exhibit No. 3.

x-q. 11. If it was after the loan, how long?

x-q. 12. Now, as a matter of fact, have you seen R. C. Daniel in the past twelve months; if yea, when and where?

x-q. 13. Was it before or after the trust-deed made by R. C. Daniel to J. J. Freeman, trustee, involved in the litigation and dated 22 Nov., 1878? If before, how long before?

x-q. 14. Do you or not claim under the trust-deed to J. J. Freeman, trustee, above enquired of, or do you repudiate the same?

147 x-q. 15. Do you personally know how much, if any portion of the money so claimed to have borrowed of you (issues in this cause) was used by said Daniel in said cotton compress? Speak only of your own knowledge.

x-q. 16. When did you last see R. C. Daniel, and where and to whom were any promises made about investing any money of yours in the cotton compress at Memphis? If communicated to you by others than said Daniel himself, state who else, the name and residence.

x-q. 17. From what source do you pretend to have derived the money so claimed to have been loaned to said Daniel?

x-q. 18. Has said Daniel secured the debt so due by him to you (as claimed) by the deposite or pledge of any collateral with you, or any one for you, or by the transfer or delivery of any property or value to you or for your benefit? If so, when, to what credit is he entitled, or what security do you hold for your indebtedness?

x-q. 19. Have you consulted any lawyer or received any letter or letters about your answering these interrogatories, and has or not

your husband assisted you in making your answers? If letters have been used, please file same.

x-q. 20. Have you answered these questions of your own
148 free will and accord, of your own dictation, or have answers been suggested to you by others; if so, by whom?

Now please read over these answers as given, and correct anything that are not of your own dictation, and please put your answers exactly as you understand the facts personally, without suggestions from any source.

HUMES & POSTON,
For A. H. H. Dawson.

I, Bell W. Etheridge, clerk of the U. S. Circuit Court for the western district of Tennessee, do hereby certify that the foregoing is a true and correct copy of the original interrogatories as the same now appears of record and on file in my office.

Witness my signature and the seal of said court this 23 day of May, 1879.

[SEAL.] BELL W. ETHERIDGE,
Clerk.

149 In the Circuit Court of the United States for the western district of Tennessee.

RICHARD C. DANIEL, S. HIGGINS CRAIG, ELEANOR E. LOWRY, et al., complainants,
vs.
A. H. H. DAWSON, J. J. FREEMAN, trustee, S. B. STEERS & Co., E. L. MORSE, partners, and others, defendants.

The deposition of F. L. Hanly, witness for the complainants, taken in the above styled cause, to be read as evidence therein, and taken on interrogatories of complainants and cross-interrogatories of the defendants hereto attached, and taken on the 29th day of May, 1879, in the town of Nicholasville, in the county of Jessamine, state of Kentucky, before Lewis D. Baldwin, notary public for said county and state.

The witness, said F. L. Handly, aged about 48 years, being first duly sworn to make true, full, and perfect answers to all of said interrogatories, deposes as follows:

150 *Answers to complainants' interrogatories propounded to F. L. Handly.*

To 1st int. I am his sister.

2nd. I deposited with R. C. Daniel, in 1864, one thousand dollars, the proceeds of sale of property. I requested him to retain, lend out, & manage same for use and benefit of my daughter until she grew to womanhood. My husband was then in the army, and I entrusted this money to my brother because I had confidence in

him in every respect. This money accumulated until it doubled itself.

3rd. I know very little about the cotton compress. I only know that more than one year ago I received a letter from R. C. Daniel recommending that he invest my funds in the enterprise. I wrote him to do so, and this is all I know.

5th. I cannot.

Answers of F. L. Hanly to cross-interrogatories.

21. I am.

22. He is.

151 Q. 3. I had a separate estate by inheritance from my father. There was no will. Administrators and commissions divided the estate.

Q. 4. I have not.

Q. 5. It was not.

Q. 6. I have no security, nor any written evidence.

Q. 7. (No answer.)

Q. 8. The deposite was made by me as stated in my answer to direct interrogatory.

Q. 9. I handed him the money in person.

Q. 10. There was no agreement. I received a letter from R. C. Daniel saying he would invest the money, and I consented.

Q. 11. I don't understand this question.

Q. 12. As a matter of fact, I have not seen R. C. Daniel within twelve months.

Q. 13. I have answered.

Q. 14. I am no lawyer and do not comprehend the intention of your question. I furnished two thousand dollars to be subscribed to the compress company. This money was used in its building and I claim an interest to that amount in the property, and beg the honorable court to allow it to me.

Q. 15. I know that all the two thousand dollars was so invested.

Q. 16. I have not seen R. C. Daniel within a year, and
152 then in Jessamine county, Kentucky. This was before the compress was built.

Q. 17. I have answered the question.

Q. 18. He has not.

Q. 19. I have not. My husband has not assisted me in making these answers; he absent from home.

Q. 20. I have answered from free will and accord. I have answered as I understand the facts.

And further deponent saith not.

F. L. HANLY. [SEAL.]

STATE OF KENTUCKY,
County of Jessamine, } *ss.*

I, Lewis D. Baldwin, notary public in and for the county and state aforesaid, do hereby certify that the foregoing deposition of F. L.

Hanly, written on papers 1, 2, 3, and 4, and hereto attached as part hereof, was taken before me at my office, in the town of Nicholsville, in the county and state aforesaid, on the 29th day of May, 1879, in the cause and for the purposes named in the caption thereof. The deponent appearing before me in person, and being by me first duly sworn to make true, full, and perfect answers to the interrogatories and cross-interrogatories, and referred to in the caption
153 and hereto attached as part hereof, she answered the same separately propounded to her by me, as thereby shown, marked, and numbered, being all reduced to writing by me in her presence, and was by her duly signed and sealed. I further certify that I am not related to deponent by affinity or consanguinity, and I have no interest in said suit, and said deposition has not been out of my possession or control since being taken, nor altered or changed in any particular or manner, and the only person present at the taking of the same being the deponent.

In testimony whereof I have hereonto subscribe my name and affix my seal of office, in the town of Nicholsville, state of Kentucky, on this 29th day of May, 1879.

[SEAL.] LEWIS D. BALDWIN,
Notary Public for Jessamine county, Ky.

STATE OF KENTUCKY, }
County of Jessamine, } *ss.*

I, William H. Phillips, presiding judge of the county court for the county and state aforesaid, do hereby certify that Lewis D. Baldwin, whose genuine certificate and attestation thereof appears
154 attached to the foregoing deposition of F. L. Hanly, is now, and was the time of giving and signing the same, a notary public of said county and state, duly commissioned and qualified, and full faith and credit are due and ought to be given to all of his official acts as such.

Given under my hand at Nicholsville, Kentucky, this 29th day of May, 1879.

[SEAL.] W. H. PHILLIPS,
P. J., J. C. C.

Costs for taking deposition: Notary fee, $2.00; judge's fee, .25; postage, .10—chargeable to complainants, $2.35.

L. D. BALDWIN,
N. P., J. C.

155 (Endorsed:) No. 326, Eq.; U. S. Circuit Court, western dist. of Tenn.; R. C. Daniel et als. *vs.* A. H. H. Dawson et als.; deposition of F. L. Hanly; opened at request of Gantt and Flippin; filed June 2, 1879; Bell W. Etheridge, clerk.

156 In the Circuit Court of the United States for the western district of Tennessee.

RICH'D C. DANIEL, S. HIGGINS CRAIG, ELEANOR E. LOWRY, et al.,
vs.
A. H. H. DAWSON, J. J. FREEMAN, trustee, S. B. STEERS, & E. L. MORSE, partners, and others. } In equity.

For complainant.

Interrogatories to be propounded to Eleanor E. Lowry.

1st. State whether you are or not a relation of Rich'd C. Daniel. If yea, give the name of other sisters.

2d. State whether or not there was left by you with Rich'd C. Daniel any money or monies at any time. If yea, was it yours? How did it come to you? What was the amount, and detail all the circumstances in connection therewith?

3rd. State if you know anything of a cotton compress that said Rich'd C. Daniel built or contracted to be built; whether you
157 had or not any interest in the same, or whether you owned any interest in the same; state all you know about this matter, if you know anything.

4th. If any of your money was left with said Rich'd C. Daniel, state under what conditions and circumstances.

5th. Do you know or can you set forth any other matters or things which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answers.

GEORGE GANTT AND
WM. S. FLIPPIN,
Sol's for Compl'ts.

Cross-examination by Humes and Poston for A. H. H. Dawson:

x-q. 1. The cross-bill filed by you herein shows that this money so enquired about was loaned or advanced by you on Octo. 1st, 1878. Is that correct? If so, say so.

x-q. 2. Did he at the time have any other moneys belonging to you? If so, what amount.

x-q. 3. How did you send or deliver the money to him? If
158 by express or draft or check on any bank, state it, giving name of bank and where; whose check, if any one else than your own, was used.

x-q. 4. Was the money loaned (to) you upon the personal application of said Daniel? If not, and you loaned it to him upon his request in writing, please produce and file the same as Exhibit "A" to this deposition.

x-q. 5. Did you take from him at the time any obligation in writing showing the loan? If so, please produce and file same as Exhibit "B" hereto.

x-q. 6. Did you take from him, and have you now, a written obligation or any security of any character for the loan? If so, state what it was—its exact description and value.

x-q. 7. Was this debt first contracted and the money advanced by you on Oct. 1, 1878, for the first time, or was the same only renewed by the execution of a new obligation for an old indebtedness outstanding prior to that time? If yea, state the date of its first being loaned.

x-q. 8. Had you the money on deposit anywhere or with any person at date of the loaning to said R. C. Daniel—if, as a matter of fact, you say you ever did loan any money to him? If yea, with what person or bank, and where located or residing?

x-q. 9. If you pretend to say that you and said Daniel ever had any agreement about the money invested in the cotton compress, was it before or after the loan, and was the same in writing? If yea, please file the same as Exhibit "C."

x-q. 10. If it was after the loan by you, state how long.

159 x-q. 11. Was it before or after the execution of the trust deed made to J. J. Freeman, trustee, involved in the litigation; if before, how long before? if after, how long after?

x-q. 12. Do you or not claim under such trust, or do you repudiate the same? I refer to the trust deed made by R. C. Daniel to J. J. Freeman, trustee, involved in this litigation.

x-q. 13. Do you personally know how much, if any portion, of the money so borrowed of you (if such is the case) was used by said Daniel in said cotton compress? If so, state your means of personal knowledge on the subject.

x-q. 14. Where did you last see R. C. Daniel, and where and to whom were any promises made about investing any money of yours in this cotton compress other than said Daniel himself? State who else, their name and residence.

x-q. 15. From what source did you derive this money so pretended to have been loaned by you to said R. C. Daniel?

x-q. 16. R. C. Daniel in his deed of trust only reports $1,000 due to you. Is this correct or not?

x-q. 17. Has Daniel paid you any portion of this debt? or pledged or secured the same to you by the deposit or pledge of any collateral with you, or any one for you, or by the transfer or de-

160 livery of any property or value to you, or for your benefit? If so, when, and to what credit is he entitled? or what security do you hold for your indemnity?

x-q. 18. Have you answered these interrogatories fairly and without evasion, and have you withheld any fact that would be of interest to the cause of A. H. H. Dawson, or other creditors? If yea, state it fully and without reserve.

HUMES & POSTON,
For A. H. H. Dawson.

x-q. 19. If you are a married woman and have any estate settled to your own sole and separate use, state it, from whence derived, how evidenced; if by writing, produce it or a duly-certified copy.

HUMES & POSTON,
For A. H. H. Dawson.

(Endorsed:) No. 329, equity; U. S. Circuit Court; S. B. Steers & Co. *v.* R. C. Daniel et al. Interrogatories and cross-interroga-
161 tories for E. E. Lowry. Filed May 20, 1879. Bell W. Etheridge, clerk; H. E. Andrews, d. c.

I, Bell W. Etheridge, clerk of the U. S. Circuit Court for the western district of Tennessee, do hereby certify that the foregoing is a true and complete copy of the original interrogatories as the same appears of record and on file in said court.

Witness my signature and the seal of said court this 23rd day of May, 1879.

BELL W. ETHERIDGE, *Clerk.*

162 In the Circuit Court of the United States for the western district of Tennessee.

RICH'D C. DANIEL, S. HIGGINS CRAIG, ELEANOR E. LOWRY, et al., complainants,
vs.
A. H. H. DAWSON, J. J. FREEMAN, trustee, E. B. STEERS, & E. L. MORSE, as partners, &c., et al., defendants.

The deposition of Eleanor E. Lowry, witness for the complainant in above entitled cause, taken and to be read as evidence therein, and taken on interrogatories of the complainants and cross-interrogatories of the defendants, hereto attached as part hereof, and taken on the 29th day of May, 1879, in the town of Nicholsville, in the county of Jessamine, state of Kentucky, before Lewis D. Baldwin, notary public for said county and state. The witness, said Eleanor E. Lowry, aged about 43 years, being first duly sworn to make true, full, and perfect answers to all of said interrogatories and cross-interrogatories, deposes as follows:

Answers to complainants' interrogatories propounded to Eleanor E. Lowry.

163 1st. I am a relative of Richard C. Daniel. The other sisters are Fannie S. Hanly and S. Higgins Craig and Kate P. Daniel.

2d. I left with R. C. Daniel money belonging to me. It came from my husband, M. S. Lowry. The amount was fifteen hundred dollars, and was left July, 1868. The same was lent out by said Daniel, and the earnings and accumulations amounted to three thousand dollars or more. He acted as my agent in the lending and investing of this money.

3rd. Mr. Daniel built a cotton compress in Memphis about a year ago. I assented to his using my three thousand dollars in said press, he agreeing to give me stock for the money when a company was organized. My interest then was three thousand dollars in the cotton press.

4th. I have stated in answer to third question the circumstances under which this money was left.

5th. I do not know any other matters or things which may be a benefit or advantage to the parties at issue in this cause, or that may be material to the subject of this examination. I entrusted the money with R. C. Daniel as my agent, who informed me that the same had accumulated under his management to three
164 thousand dollars, and under his advice I agreed to put it into the cotton compress business.

Answer of Eleanor E. Lowry to cross-interrogatories.

No. 1. No; the money originally left with R. C. Daniel was in 1868.

No. 2. He did not have any other monies belonging to me.

No. 3. The money was sent to him by draft to New York in 1868. I cannot give name of bank.

No. 4. I cannot remember the exact circumstances under which the money was placed in his hands. I have not preserved any letter or reference to it.

No. 5. I did not take any obligation or writing. The money was sent by M. T. Lowry, my husband.

No. 6. I took no security; the money was left in faith only, and to be used for my benefit.

No. 7. I have answered this fully in preceding answers.

No. 8. The money had not been deposited with any bank, but was collected and sent to Daniel.

No. 9. I don't pretend to say anything. I do say that Daniel wrote me about the cotton-press, and I consented to have the money invested in it. This was in December, 1877, I think.

No. 10. I have answered this in No. 9; it was before the
165 execution of the trust deed.

No. 12. I don't know what you mean by this question, nor its bearings upon my claim. I claim all my rights as having furnished three thousand dollars for the press business, Mr. Daniel used this money for that purpose, I consenting; I left the details with him and claim my interest under his investment.

No. 13. The entire three thousand dollars was used as Mr. Daniel wrote me.

No. 14. I saw R. C. Daniel last in Jessamine county, Kentucky. I know no one, except my husband, with whom I have talked about this matter; as before stated, I left the whole money with R. C. Daniel, and always adopted his suggestions.

No. 15. I have stated the source from which the money came. My husband being embarrassed gave me the original fifteen hundred

dollars, which I left in the hands of R. C. Daniel to be invested for my benefit.

No. 16. I have not seen the deed of trust. The amount due is three thousand dollars.

No. 17. Daniel has sent me money within the period named. He has never gave any pledge or security. I relied entirely upon his integrity and ability. I hold no security.

No. 18. I have answered fully, withholding nothing that would be of advantage to A. H. H. Dawson.

166 No. 19. I am a married woman, and own in my own right by inheritance my interest in my father's real estate, and also a house and lot in Nicholsville, in said county and state. I have not at hand my title papers thereto.

ELEANOR E. LOWRY. [SEAL.]

STATE OF KENTUCKY, }
County of Jessamine, } *ss.*

I, Lewis D. Baldwin, notary public in and for the county and state aforesaid, do hereby certify that the foregoing deposition of Eleanor E. Lowry, comprised in pages 1, 2, 3, 4, 5 and 6, and hereto attached as part hereof, was taken before me, at my office in the town of Nicholsville, in the county and state aforesaid, on the 29th day of May, 1879, in the cause and for the purposes named in the caption thereof. The deponent appearing before me in person, and being by me first duly sworn to make true, full and perfect answers to the interrogatories and cross-interrogatories referred to in the caption and hereto attached as part hereof, she answered the same separately propounded to her by me as thereby shown, marked and numbered and being all reduced to writing by me in her presence, and

167 by her so duly signed and sealed.

I further certify that I am not related to the deponent by affinity or consanguinity, and I have no interest in said suit, and said deposition has not been out of my possession or control since being taken, nor altered or changed in any particular or manner, and the only person present at the taking of the same being the defendant herself.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal at my office in the town of Nicholsville, in the county and state aforesaid, this 29th day of May, 1879.

LEWIS D. BALDWIN,

[SEAL.] *Notary Public, Jessamine county, Kentucky.*

STATE OF KENTUCKY, }
County of Jessamine, } *ss.*

I, William H. Phillips, presiding judge of the County Court in and for the county and state aforesaid, do hereby certify that Lewis D. Baldwin, whose genuine certificate and attestation thereof, with his seal of office, appears attached to the foregoing deposition of

Eleanor E. Lowry, is now and was at the time of giving and signing the same a notary public in and for said county and state,
168 duly commissioned and qualified, and full faith and credit are due and ought to be given to all of his official acts as such.

Given under my hand, at Nicholsville, Kentucky, this the 29th day of May, 1879.

W. H. PHILLIPS,
P. J., J. C. C.

Cost of taking deposition: Notary fee, 2.00; judge's fee, 0.25; postage, 0.10—$2.35. Chargeable to complainants.

LEWIS D. BALDWIN, *N. P., J. C.*

(Endorsed:) No. 326, Eq.; U. S. Circuit Court, western dist. Tennessee; R. E. Daniel et als. *vs.* A. H. H. Dawson; deposition of E. E. Lowry; opened at request of Gantt and Flippin; filed June 2, 1879; Bell W. Etheridge, clerk.

169 In the Circuit Court of the United States for the western division of Tennessee.

R. C. Daniel, S. Higgins Craig, Eleanor E. Lowry, et als., *vs.* A. H. H. Dawson, J. J. Freeman, S. B. Steers, E. L. Morse, and others. } Equity.

For complainants.

Interrogatories to be answered by S. Higgins Craig.

1. State how much, if any, money was, at any time, left by you in the hands of Richard C. Daniel; if yea, state under what condition and circumstances.

2. If you answer yea to the foregoing interrogatory No. 1, please go on and state fully any contract or agreement had between you and Richard C. Daniel; and if you let him have any money, state what was the amount and when and where delivered to him.

3. If you had any seperate estate of your own, as stated in your answer and cross-bill, from what sum (?) was that derived;
170 did you inherit it, or was it given to you, or did you make it by your own industry?

4. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

GEO. GANTT,
W. S. FLIPPIN,
Sol's for Complainants.

Cross-examination by Humes and Poston for A. H. H. Dawson:

x-q. 1. What kin are you to R. C. Daniel?

x-q. 2. Where do you reside and when did you last see R. C. Daniel, the defendant?

x-q. 3. If you pretend to state that you loaned any moneys to R. C. Daniel, state the amount thereof and from what source you derived it.

x-q. 4. If you say you loaned any money to said Daniel, state whether or not it was at the time of loan in any bank or with any other individual than yourself on deposit, stating name of person or bank with whom deposited.

x-q. 5. If you did make any such loan, was the money sent to Daniel by you, by express or by check on any bank, giving name of express co. or bank, and where situated?

171 x-q. 6. The cross-bill in this cause, as filed by you, avers that the money was loaned to Daniel on 1st Octo., 1878; is this true?

x-q. 7. Was the loan made upon the personal application of Daniel? If not, and you have any written communication from him in reference to the loan made or or written before the loan, please produce and file same as Exhibit "A A" to your deposition.

x-q. 8. Did you take from said Daniel any written evidence of the loan? If yea, please produce and file the same as Exhibit "B B."

x-q. 9. Did you at the time or have you since been paid anything, or received anything, in satisfaction or part satisfaction of the loan; if so, when, of what did it consist, and what was the value?

x-q. 10. Were any collaterals put into your hands, or the hands of any person or copartner for you, or has there been any security given to you, directly or indirectly, for the debt? If yea, state the full particulars, giving a particular description of the securities and their value.

x-q. 11. Is the debt in its present shape the same that it originally was, or has it been renewed from time to time? If so, how often and state its changes?

x-q. 12. If you pretend to say that you and said Daniel ever had any agreement about this money being invested in the cotton compress in litigation in this suit, was it before or after the time of making the loan, and was such agreement in writing? If yea, please file same as Exhibit "C C."

172 x-q. 13. Now, is it or not the fact you personally have not seen Daniel for nearly a year? If not, when was the last time you saw him?

x-q. 14. Are you then certain that the money was loaned October 1, 1878?

x-q. 15. Was the loan by your other sister all made at the same time? If yea, how do you know the fact?

x-q. 16. If the promise to invest the money in the company was made after the loan, how long?

x-q. 17. Be particular and give the exact date when such an agree- was made; and are you certain that it occurred before October 1, 1878?

x-q. 18. Do you personally know how much money Daniel borrowed of any other sister of his, and what amount or securities there were given to them? If yea, state it.

x-q. 19. Do you personally know that any portion of the money you pretended to have loaned Daniel went into this compress—I mean its purchase? If you do, state how much and how you *personally* know the fact.

x-q. 20. What amount, if anything, in cash did you loan said Daniel, and what amount in cash was loaned him by your sister?

x-q. 21. Were these promises to invest your money by Daniel in the compress made to you personally or in writing? If the latter, file the written evidence, and if communicated to you by others state their names and present residences and where you were so informed of the fact.

173 x-q. 22. Have you answered these questions freely without conference with or dictation from any lawyer or other person, and have you withheld any fact or facts or evaded or refused to disclose any fact that you think or are advised will injure you or your case? If so, read over these interrogatories and answer same freely.

x-q. 23. Have you received any communication from Daniel in regard to your giving the deposition? If so, produce and file it.

HUMES AND POSTON,
For A. H. H. Poston.

I, Bell W. Etheridge, clerk of the U. S. Circuit Court for the western district of Tennessee, do hereby certify that the foregoing is a true and complete copy of the original interrogatories as the same appears of record and on the files of said court.

Witness my signature and seal of said court this 23rd day of May, 1879.

BELL W. ETHERIDGE, *Clerk.*

174 (Endorsed:) No. 329, equity; U. S. Circuit Court; S. B. Steers & Co. *vs.* R. C. Daniel. Interrogatories and cross-interrogatories of S. H. Craig. Filed May 21st, 1879. Bell W. Etheridge, clerk; H. E. Andrews, d. c.

175 In the Circuit Court of the United States for the western district of Tennessee.

RICHARD C. DANIEL, S. HIGGINS CRAIG, ELEANOR E. LOWRY et al., complainants,
versus
A. H. H. DAWSON, J. J. FREEMAN, S. B. STEERS, E. L. MORSE and others, defendants.
} In equity.

The deposition of S. Higgins Craig, witness for the complainants,

taken and to be read as evidence in the above-styled cause, and taken on interrogatories of the complainants and cross-interrogatories of the defendants, hereto attached, and taken on the 29th day of May, 1879, in the town of Nicholasville, in the county of Jessamine, state of Kentucky, before Louis D. Baldwin, notary public for said county and state. The witness, said S. Higgins Craig, aged about 35 years, being first duly sworn to make true, full, and perfect answers
176 to all of said interrogatories, deposes as follows, (see next page:)

Answers to complainant's interrogatories propounded to S. Higgins Craig:

A. 1st. I left with R. C. Daniel five thousand dollars to be invested by him for my interest in the best way as he deemed best.

2d. I have answered this question in my answer to question No. 1. The money was delivered at different times and places.

3d. I inherited from my father some estate, and was a beneficiary by a life policy of my deceased husband; the two years made up the five thousand dollars mentioned.

4th. I cannot; I only know that I had placed in the hands of R. C. Daniel all the money I had, and requested him to use the same to the best advantage, I always approving his acts.

Answers of S. Higgins Craig to cross-interrogatories:

1st. I am his sister.
177 2d. I reside in Jessamine county, Kentucky; last saw R. C. Daniel in December, 1877.

3d. I have answered this question in my answer to No. third direct-interrogatory.

4th. The money left with R. C. Daniel embraced a period from 1868 to 1874; at one time I had five thousand dollars on deposit with 4th National Bank of Memphis, Tennessee; it was drawn out by my check in favor of R. C. Daniel; I cannot now fix the date.

5th. I have substantially answered this question in previous answers.

6th. No.

7th. I can answer only by saying that I left the money with R. C. Daniel to be used or managed for my advantage; I have received many letters from him in reference to the money, but I have not kept any.

8th. I did not.

9th. I have received remittances from time to time, but I cannot state amounts; I relied entirely upon R. C. Daniel, and paid
178 no attention to accounts or amounts.

10th. No.

11th. I have answered this before; the amount left has changed from time to time.

12th. I received, when in Logan county, Kentucky, a letter from

R. C. Daniel suggesting that he invest my money in the cotton press; this was in September, 1877; I gave permission and it was done.

13th. It is a fact that I have not seen R. C. Daniel for a year, but the investment consented to by letter was subsequently ratified in person, as I remained in Memphis the guest of Mr. Daniel for several months after the press was completed.

14th. I know that it was not.

15th. The money left with R. C. Daniel was not at the same time; I know the fact, though cannot accurately state why.

16th. There was no loan ever made; Mr. Daniel acted as my agent to loan out or invest my money.

179 17th. I am certain it occurred before October, 1878; I cannot give exact date; I had no knowledge of the trust deed until I was advised to authorize the trustee to sell; I claim all rights that I may have in law or equity by virtue of the trust fund left with R. C. Daniel.

18th. I was informed by R. C. Daniel, when in Memphis during the winter of 1877, when he was building the compress, that he intended putting in five thousand dollars which he had belonging to Mrs. Hanly and Mrs. Lowry.

19th. All of the five thousand dollars went into the compress, as I was informed by Mr. Daniel and as I consented thereto.

20th. I have answered this in previous answers; I cannot improve on it.

21st. The first suggestion to invest my money was by letter; I wrote R. C. Daniel consenting; afterwards I visited Memphis and affirmed my former consent; I have not the letter.

22nd. I have answered freely; I have consulted my attor-
180 ney, after reading the interrogatories, but he did not dictate my answers; I have not withheld facts.

23rd. I have not received any communications from R. C. Daniel in regard to the deposition.

And further deponent sayeth not.

S. HIGGINS CRAIG. [SEAL.]

STATE OF KENTUCKY, }
County of Jessamine, } *ss.*

I, Lewis D. Baldwin, notary public in and for the county and state aforesaid, do hereby certify that the foregoing deposition of S. Higgins Craig composed on pages 1, 2, 3, 4, 5 and 6, and hereto attached as part hereof, was taken before me at my office in the town of Nicholasville, in the county and state aforesaid, on the 29 day of May, 1879, in the cause and for the purposes named in the caption thereof. The deponent appearing before me in person and being by me first duly sworn to make true, full, and perfect answers to the in-
181 terrogatories referred to in the caption and hereto attached as part hereof, she answered the same separate, propounded to her by me as thereby shown, marked, and numbered, and being all

reduced to writing by me and in her presence, and was by her so duly signed and sealed. I further certify that I am not related to deponent by affinity or consanguinity, and I have no interest in said suit, and said deposition has not been out of my possession or control since being taken, nor altered or changed in any particular or manner, and the only person present at the taking of the same being the deponent herself.

In testimony whereof I have hereunto subscribed my name and affixed my official seal at my office in the town of Nicholas-
182 ville, the county and state aforesaid, this 29 day of May, 1879.

LEWIS D. BALDWIN,
Notary public, Jessamine county, Kentucky.

STATE OF KENTUCKY, } *ss.*
County of Jessamine, }

I, William H. Phillips, presiding judge of the county court in and for the county and state aforesaid, do hereby certify that Lewis D. Baldwin, whose genuine certificate and attestation thereof, with his seal of office, appears attached to the foregoing deposition of S. Higgins Craig, is now and was at the time of giving and signing the same a notary public in and for said county and state duly commissioned and qualified, and full faith and credit are due and ought to be given to all of his official acts as such.

Given under my hand at Nicholasville, Kentucky, this 29 day of May, 1879.

W. H. PHILLIPS, *P. J., J. C. C.*

183 (Endorsed:) No. 329, eq. U. S. circuit court, western district of Tenn. S. B. Steers et als. *vs.* R. C. Daniel et als. Depo. of S. H. Craig. Opened at request of Gantt and Flippin, and filed June 2, 1879. Bell W. Etheridge, clerk.

184 United States Circuit C't.

STEERS *vs.* DANIEL. } No. 329. Equity.

Statements of amounts of purchase-money placed in the hands of C. W. Metcalf by consent of parties in the above cause, to be paid over to J. J. Freeman, trustee, after first paying certain prior incumbrances, costs, &c.:

June 14, 1879. Am't rec'd			$8,000 00
Cr.			
June 14, '79. By am't paid Jno. M. Lea ground rent	748 40		
" 16, '79. " am't paid Bosher & Rich *vs.* Daniel Chan. Ct. mechanics' lien	560 00		
" " " By am't costs Bosher *vs.* Daniel	40 70		
Carried forward	$1,349 10		$8,000 00

	Brought forward.....	$1,349 10	$8,000 00
June 17, '79.	By am't M. T. Williamson's costs..	400 04	
" "	" " B. W. Etheridge costs...	85 70	
" "	" " W. Z. Mitchell, ground rent.....	200 00	
" "	" " R. J. Black, costs Steers *vs.* Daniel.....	79 25	
	Commission of this court.....	1,200 00	
185	(Of which $52.50 was afterwards paid to Clough.)		
	Handed back to J. J. Freeman, trustee.....	4,685 91	
			$8,000 00

The $1,200.00 less $52.50 paid to Clough is, as I am informed by Mr. Burr, not yet distributed, but is still in his hands awaiting the payment of taxes out of the same, which have not been settled.

Besides the foregoing, one of the $2,000 notes part of the purchase-money was received by J. J. Freeman, trustee, which has been collected by him, and the proceeds are now in his hands.

It is agreed that the foregoing statement may be used as
186 evidence in the above cause of the amount of money paid out under the orders of the court to satisfy prior liens and claims upon said fund.

It is further agreed that the original papers in the two suits of Dawson *vs.* Daniel on the law side of the United States Circuit Court, and all the papers in the cause of S. B. Steers *vs.* R. C. Daniel et al. on file in this *in this* court and cause, including the certified transcript from the Chancery Court of Shelby county of the cause of Steers *vs.* Daniel et al., may be used as evidence herein, subject to exception for incompetency and irrelevancy.

HUMES & POSTON,
Sols. for A. H. H. Dawson.
GANTT & PATTERSON AND
METCALF & WALKER,
For X Compl'ts.

187 (Endorsed:) No. 329. Circuit Court of the United States, western district of Tennessee. S. B. Steers and another *vs.* R. C. Daniel et als. Stipulation of counsel. Agreement of counsel. Filed June 30, 1880. Bell W. Etheridge, clerk; W. B. Weisiger, d. c.

188 Circuit Court of the United States, western district of Tenn.

S. B. STEERS
vs.
R. C. DANIEL et al. } No. 329. Equity.

State by whom you were employed to represent J. J. Freeman, trustee, Mrs. S. H. Craig, Mrs. Eleanor E. Lowry, and Mrs.
189 Handley in this cause—Steers *vs.* Daniels.

In answer to questions by counsel for Dawson, Geo. Gantt says:

He answered reserving the exceptions that he is counsel, and cannot be compelled to answer as to communications between chief and counsel, and cannot waive the objection without chief's consent.

That his first employment was by R. C. Daniel to defend suits in Federal court at Memphis, against him by Dawson, on judgments from state of New York.

That Daniel had great feeling in the matter. Afterwards retained witness for his sisters, explaining to witness the nature of the
190 claim. Afterwards Mr. Freeman as trustee employed witness to represent him as trustee.

I do not think I wrote the deed of trust; my recollection is, but not quite sure, that Mr. Warriner wrote it; cannot now say who wrote it with any certainty.

GEO. GANTT.

Counsel for J. J. Freeman, trustee, reserving objections to the competency of the foregoing deposition, and to the right to call and examine said witness in respect to the matters above inquired into, cross-examine as follows:

x-q. 1. Please state fully what R. C. Daniel said to you at the time he employed you for his sisters as to the interest of said sisters in the property or the proceeds thereof here in controversy, and
191 the facts out of which their said interest arose?

(Question objected to as incompetent and irrelevant.)—Humes & Poston.

(Objection: I answer, denying the right to compel me to testify, on grounds stated to answer-in-chief.)

A. That he had been controlling a fund for them as agent or trustee, and with their consent invested it in the compress property upon an understanding that they were to be interested. I think he spoke of a charter and an issue of stock to represent their interest. That was the form; it was the understanding it was ultimately to take. This expectation had been delayed or defeated as he stated.
192 (Last above answer objected to as incompetent and hearsay.)—Humes & Poston.

GEO. GANTT.

Subscribed and sworn to before me June 30, 1880.

BELL W. ETHERIDGE, *Clerk.*

(Endorsed:) No. 329, equity; Circuit Court of the United States, western district of Tennessee; S. B. Steers *vs.* R. C. Daniel et al.; deposition of Geo. Gantt.

193 S. B. STEERS and another
329] *vs.* } In Equity, in Circuit Court U. S.
R. C. DANIEL et al.

1. Who are the complainants in the first cross-bill, and what is their relation to you?

2. Did they ever commit any funds in trust for you to manage for them? If so, state what each so committed. Was there any particular reason that moved them to repose the trust in you?

3. What instructions did they give you?

4. What was the general way in which you used the money so entrusted to you?

5. State the amount you had in hand, or was invested for each in 1877.

6. Was any change contemplated in the mode of its use in 1877; if so, what? Did you act without consulting the beneficia-
194 ries, or did you consult; if you consulted, why?

7. What was the result?

8. What interest have said beneficiaries in the proceeds of sale of cotton compress?

9. What of the beneficiaries in the second cross-bill filed by Mr. J. J. Freeman; are they *bona-fide* creditors?

10. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

FLIPPIN, GANTT & PATTERSON,
Sol's for Complainants in Cross-Bills.

(Endorsed:) No. 329, equity; Circuit Court of the United
195 States, western district of Tennessee. S. B. Steers and another *vs.* R. C. Daniel et als. Interrogatories upon which to take the deposition of R. C. Daniel, to be read as evidence on behalf compl'ts in cross-bills. Filed May 24th, 1880. Bell W. Etheridge, clerk; W. B. Weisiger, d. c.

I, Bell W. Etheridge, clerk of the U. S. Circuit Court for the western district of Tennessee, do hereby certify that the foregoing is a true and complete copy of the original interrogatories as the same appears of record and on the files in said court.

Witness my signature and seal of said court this 14 day of June, 1880.

[L. S.] BELL W. ETHERIDGE, *Clerk*,
By W. B. WEISIGER, *D. C.*

S. B. STEERS & another, } In Equity, in Circuit Court U. S.
vs.
R. C. DANIEL et al.

196 The deposition of R. C. Daniel taken before B. F. Bradford, clerk of the Circuit Court of Hardeman county, Tennessee,

upon interrogatories herewith appended, at the Bolivar hotel, in said town of Bolivar and state of Tennessee, on this 21st day of June, 1880, to be read as evidence on the trial of above-stated cause in behalf of defendants; and said R. C. Daniel, being first duly sworn, deposed and answered as follows, to wit:

Answer 1. In answer to quest. 1st, witness answers and says: Mrs. S. Higgins Craig, Mrs. Ella E. Lowry, and Mrs. Fanny L. Hanly, all being my sisters.

Answer 2. In answer to quest. 2nd, witness answers and says: They did. Mrs. S. Higgins Craig committed at one time twenty-five hundred ($2500.00) dollars, and later an additional sum of twenty-five hundred ($2500.00) dollars. Mrs. Fanny Hanly left with me, in 1864, one thousand ($1,000.00) dollars to be loaned
197 out, invested, and managed in any way I thought best for the benefit of her child, Laura Hanly. By my management this sum had accumulated to two thousand dollars. Mrs. Lowry placed in my hands, in 1868, fifteen hundred (1500.00) dollars to be loaned out and invested for her benefit. This sum was so used that after deducting remittances made to her from time to time there remained in my hands the sum of three thousand dollars. I know of no reason why they reposed the trust in me except our family relationship and their faith in me. There was a reason probably in the cases of Mrs. Hanly and Mrs. Lowry. The husband of the former when the money was intrusted to me was in the Southern army, while the husband of the latter was greatly embarrassed in his financial affairs. The first twenty-five hundred ($2500.00) dollars of Mrs. S. Higgins Craig was before her marriage to her husband, and the
198 last twenty-five hundred ($2500.00) dollars after his death, being acquired by insurance policy on his life.

Answer 3. To quest. 3d said witness answers and says: They entrusted me to lend out, invest, and manage the money to the best of my judgment. They also, severally, instructed me that I should not put the money in my business, but keep it separate from any firm business in which I was engaged.

Answer 4. In answer to quest. 4th, said witness answers and says: This was the general way in which I used the money entrusted to me.

Answer 5. In answer to quest. 5th, said witness answers and says: The amount on hand and invested for each of them, in 1877, in round figures, were as follows: For Mrs. Fanny L. Hanly, two thousand ($2,000) dollars; for Mrs. Ella E. Lowry, three thousand ($3,000.00) dollars; and for Mrs. S. Higgins Craig, five thousand ($5,000.00) dollars—in all ten thousand ($10,000.00) dollars.

199 Answer 6. In answer to quest. 6th he answers and says: There was. I suggested to the beneficiaries by letters that they invest this money, then in my hands, in the compress business. I suggested to them and advised them by letter, because the business which I recommended was new to them and different from

the kind of business in which their funds had been invested before, and different from its being lent out at interest.

Answer 7. To quest. 7th said witness answers and says: They wrote me letters consenting to the investment, and I invested for them in the Shelby cotton compress the sums respectively as follows: For Mrs. S. Higgins Craig, five thousand dollars; for Mrs. Fanny L. Hanly, two thousand dollars, and for Mrs. Ella E. Lowry, three thousand dollars.

Answer 8. To quest. 8th he answers and says: The said beneficiaries have interest in the proceeds of sale of the cotton com-
200 press as follows: Mrs. S. Higgins Craig, five thousand dollars; Mrs. Ella E. Lowry, three thousand dollars, and Mrs. Fanny L. Hanly two thousand dollars, making ten thousand dollars.

Answer 9. To question 9th he answers and says: The beneficiaries in the 2d cross-bill filed by John J. Freeman are bona fide creditors.

Answer 10. To quest. 10th he answers and says: I do not know nor can I set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination, or the matters in question in this cause.

R. C. DANIEL.

Sworn to and subscribed before me this 21st day of June, 1880.

B. F. BRADFORD,
Clerk of the Circuit Court at Bolivar, Tennessee, in and for Hardeman county, for said state.

The foregoing deposition was taken before me as stated in
201 the caption and reduced to writing by me, and I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed up said deposition, placed the same in the post office at Bolivar, Tennessee, directed to Bell W. Etheridge, cl'k U. S. Cir. Court for the western district of Tennessee, at Memphis, Tennessee, without being altered or taken out of my possession after it was taken. I further certify that there is no notary public residing within the civil district in which this deposition was taken. Given under my hand and seal of office at Bolivar, Tennessee, this 21st day of June, 1880.

B. F. BRADFORD,
[L. S.] *Cl'k of Circuit Court at Bolivar, Tennessee.*

(Endorsed:) No. 329. Circuit Court of the United States, western district of Tennessee. S. B. Steers et als. *vs.* R. C.
202 Daniel. Deposition of R. C. Daniel. Filed June 23d, 1880. Bell W. Etheridge, clk.; W. B. Weisiger, d. c.

Int. 11. Please state whether or not you ever received any letter or letters from Mrs. Craig, Mrs. Lowry and Mrs. Hanly, or either of

them, touching the investment of their funds in said compress enterprise. If so, please produce said letters.

A. I did receive letters from each of them; I cannot produce them, as they are not in my possession; I hand two of the letters, that is the one from Mrs. Craig and one from Mrs. Hanly, to Col. Geo. Gantt, counsel in this cause, and the letter from Mrs. Lowry I have lost or misplaced; I made search for the letter from Mrs. Lowry about the time I handed Col. Gantt the two other letters above mentioned, and have since searched without being able to find it; I handed those lettters to him when my deposition was about being taken,
203 during the spring, I believe, of last year.

Int. 12. State as near as you can the date and contents of said letters.

A. They were written to me, dated some time in August or Sept., 1877; they were in reply to letters written by me to each of them in which I asked their consent to permit me to invest the funds in my hands belonging to them in the above enterprise; it being a character of enterprise with which they were not familiar, I deemed it proper to write to them for their assents, and they replied giving me their full assent to make the investment.

Int. 13. Did you ever have any interview with M. T. Williamson, U. S. marshal, touching the levy made by him upon said compress property? If you did, state when and what that conversation was.

A. I did; in August, 1878; he had made or claimed previously to have made a levy upon said property, and about the
204 9th or 10th of August, 1878, I had an interview with him on the subject, and he stated to me that he had no further charge or control of the property, that he had given it up, and had abandoned his levy, and had nothing more to do with the property, and that I was at liberty to take possession, and I did so on or about the same day, as near as I can remember, Williamson having withdrawn his watchman, and I put my own watchman in possession for me, or I was put in under or by virtue of some order in the case of Steers *vs.* me and others in the Chancery Court; I can't remember the precise manner or details, except I know and remember that the possession was taken upon Williamson's saying he had nothing more to do with the property and had given up his levy.

Int. 14. You have in a previous part of your deposition made a statement regarding the claims of Mrs. Craig, Mrs. Hanly and
205 Mrs. Lowry. Now state as to the existence of the debts mentioned in said last deed to Freeman, to wit, to Milburn, Rodman, Cherry, Mitchell, Lea and Yager.

A. Those debts are as follows: to Milburn $2,000, Rodman $1,000, Cherry $500; Mitchell, I do not remember the exact amounts; it was for rent, part of the compress grounds, and the same is true as to Lea; as to Yager, the three notes of $2,000 each were made for the purpose of carrying on said compress business; there was only about $1,500 borrowed on these notes; said indebtedness to said parties has

not been paid as yet, except I understand that the Lea and
206 Mitchell ground rent have been paid out of funds in this cause; said indebtedness in said trust deed mentioned was all bona fide and validly due as shown therein.

Int. 15. State what interviews or communications you had, if any, with Mrs. Craig, Mrs. Lowry, and Mrs. Hanley as to the execution of said trust deed prior to the execution of the same.

A. I had none; I made the same of my own motion, including them as beneficiaries therein as an additional security for the trust fund which I had in my hands belonging to them, and which I had invested for them in said enterprise.

Cross-examination by Humes & Poston:

207 x-q. 1. Was or was not the trust deed to Jno. J. Freeman, trustee, made at Memphis, Tenn., at a time when you were in full health, and when the matters were all fresh in your mind; and is or not the statements and recitals of that trust deed more likely to be the facts than your present recollection of them at this period?

A. I was in better physical condition then than now, but my memory has not been impaired; the recitals then made therein were the facts.

x-q. 2. How much money was ever paid out by you in the cotton compress? Please designate the amounts and to what particular objects it was applied.

A. The entire amount was about $17,000 in all; I kept no seperate account of the disbursements except the receipts for
208 each payment, which would show for themselves.

x-q. 3. How much bonus do you remember was paid for the leasehold, if any?

There was a bonus to Mitchell and others; don't remember the exact amounts each; Lally was another party from whom the purchase or leasehold was bought.

x-q. 4. Did you not keep all the money, the $17,000, together on deposite in some bank? If so, state what bank and in whose name it it was deposited.

I did not.

x-q. 5. Where was it kept?

A portion of the money was kept in the 4th National Bank in my name and to my credit.

x-q. 6. Please designate as near as you can to whom and
209 for what ac. the $17,000 was paid out, stating how much was paid to Steers, and designate as near as you can to what other purpose the money was applied.

x-q. 7. There was about $11,000.00 paid to Steers and the balance for buildings and other improvements upon the grounds.

x-q. 8. Who put up the improvements on the grounds; what contractor?

A. It was done by day labor, and the materials were purchased by me.

x-q. 9. Did you keep the receipts for such disbursements? If so, please have them produced and filed as exhibits to your deposition.

A. I did. They are not in my possession at this place, and therefore I can't produce them. All my papers and receipts are *at* in Memphis; I was at Bolivar, Tennessee, sick in bed.

210 x-q. 10. In whose possession are such papers, and can't they be produced?

They are stored in a warehouse in Memphis, and could not be produced except by much labor in searching for them amongst a large quantity of other papers.

x-q. 11. Was the money of your sisters kept by you separate from your own, and did you mix it and use it indiscriminately?

They were kept separate, and were not used indiscriminately.

x-q. 12. Please designate the manner in which you kept it separate.

Their moneys were lent out on promissory notes with or without collaterals, as the case may be, and these notes and collater-
211 als in every case were kept in envelopes with the names of the respective notes thereon and a memoranda within in the shape of a declaration showing to whom these notes belonged, and these envelopes I kept in a tin box, which box was always lodged in some bank vault for safety. There were some cases where bonds were purchased for their account were kept in the same manner as the notes.

x-q. 13. Your sisters say you sent them moneys from time to time; please state the amount of such remittances.

I can't state the amounts.

x-q. 14. In the U. S. Circuit Court at Memphis, is it or not the
212 fact that early in Nov., 1878, you, through your counsel, moved to quash the levy of the Dawson execution upon the compress, which had been levied prior to the execution of your trust deed, on the ground that the marshal had abandoned his levy and the executions were void; and did or not the said court hold in that proceeding that the levies were valid and had never been abandoned?

I do not know; I have no detail of this such proceedings.

x-q. 15. Have you not been informed that such proceedings have been had with result as indicated?

I had some information, but do not now remember its precise character in relation to the property.

213 x-q. 16. Were or not George Gantt and W. S. Flippin your attorneys in that proceeding?

They were.

x-q. 17. Was or not the trust deed to J. J. Freeman executed in 1878 drawn by a lawyer, or was it drawn by yourself?

A. By a lawyer,

x-q. 18. What part of the debts secured have other security than that embraced in the trust deed?

None.

x-q. 18. What part of these debts were contracted after the contract with Steers & Co. was made?

All of it, except that of my three sisters, was borrowed after the contract with Steers & Co. for the compress was made. The entire indebtedness other than the amount due my three sisters, which by express agreement was to be invested by them in the compress
214 as a trust fund, was a general indebtedness for money loaned, and must stand by the trust deed for its security. It must, I suppose, as a manner of law stand on the trust deed for security.

R. C. DANIEL.

The foregoing deposition was taken this day by consent of parties; all exceptions for want of notice, certificate, and other informalities waived, reserving only exceptions for incompetency and irrelevancy; and as a part of said deposition it is agreed that the examination of said witness attached to this deposition taken on the 21st day of June, 1880, may be taken and considered as a part of this deposition, the same as if entire deposition had been taken this day.

215 Oath of the witness also waived, this 26th day of June, 1880.

GANTT & PATTERSON AND
METCALF & WALKER,
Sols. for X Complts.
HUMES & POSTON,
Sol's for A. H. H. Dawson.

(Endorsed:) No. 329, equity; Circuit Court of the United States, western district of Tennessee; S. B. Steers *vs.* R. C. Daniel. Deposition of R. C. Daniel. Filed June 30, 1880. Bell W. Etheridge, clerk; W. B. Weisiger, d. c.

216 [Copy.]

This indenture of lease between W. Z. Mitchell and Mrs. G. T. McKinney of the first part, and R. C. Daniel of the second part, all of Shelby county, Tennessee, witnesseth: That the said first parties hereby lease to the said R. C. Daniel for the period of six years from this date two certain lots of ground in the city of Memphis, Shelby county, Tennessee, described as follows, to wit: Lots 5 and 6 of the Robbins sub. of original county lot 499, each fronting 59½ feet on the south side of Washington street in said city, and running back southwardly between parallel lines 160 feet, more or less, to the south side of the alley between Adams and Washington
217 streets, except 15 feet on west side of lot No. 5, now occupied and claimed by owner of the old Brooks foundary, and covenant that the party of the second part may have and possess the same against all lawful claims during the full term of this lease.

In consideration whereof, the said second party, for rent thereof, hereby agrees to pay the said first party the sum of $125.00 per an-

num for each lot, in semi-annual payments, on the first days of July and January (commencing on the 1st day of July, 1878) each and every year of this lease.

The said second party further agrees that he will pay off and discharge all taxes and assessments, whether state, county, or municipal, which may be imposed upon this land or the improvements
218 thereon during this lease, and to deliver said lots to the said first parties at the expiration of this lease free from all incumbrances whatsoever.

It is expressly agreed that in case all taxes and assessments are not paid during the current year, no matter in whose name listed, or in case the rent or any part thereof is not paid at maturity, then this lease may be declared forfeited at the option of the first parties, who may enter upon the premises and take possession of the same as of their former estate, out of the hands of the second party, or any occupant claiming under him; and a lien is hereby granted by the said second party and retained by the said first parties upon all improvements that may be put upon said premises by said second party or
219 any one for him, for full satisfaction of all rent, tax, or other cause of action that may accrue to the said first parties under this lease. Any improvements or machinery except sidewalks or cisterns, made or rented by the second party or his agents on the premises, may be removed at the end of this lease, provided all obligations contained herein have been performed by said second party.

As to the improvements now on said lots, it is agreed that the second party shall have full use and control of them; but if the said second party shall remove or cause the same to be removed he shall pay to the first parties for the said improvements such sum as
220 shall be agreed upon by appraisers to be appointed during the present week; said appraisers to be paid at the expiration of the lease, or if removed before the expiration of this lease, to be paid within one year after such removal.

The second party further agrees to become liable for and discharge all municipal impositions or requirements in the nature of pavements or sidewalks ordered or required to be laid or constructed, and to prevent, avoid, or become liable for all legal nuisances declared against said land by the proper authorities, in default whereof this lease may be declared forfeited, at the option of the said first parties.

And in the event of a forfeiture for such reasons or defaults, the penalties or charges, in so far as they are of a pecuniary nature,
221 shall become a valid and legal demand against the said second party, protected by the contingent lien hereinbefore given and retained upon the improvements put upon said land by the lessee herein.

In witness whereof the said parties have hereto set their hands this Jan'y 7th, 1878.

G. T. McKINNEY,
By W. Z. MITCHELL, *Agent*,
And W. Z. MITCHELL,
For himself and as guardian for Courtney Mitchell, his daughter.

STATE OF TENNESSEE, }
Shelby county. }

Personally appeared before me, J. P. Young, a notary public in and for said state and county, W. Z. Mitchell, the within-named
222 bargainor and lessor, with whom I am personally acquainted, and who acknowledged that he executed the foregoing lease for the purposes therein contained.

Witness my hand and official seal this Jan'y 8, 1878.

[SEAL.] J. P. YOUNG,
Notary public, Shelby county, Tenn.

STATE OF TENNESSEE, }
Shelby county. }

I, James Reilly, clerk of the county court of said county, do hereby certify that J. P. Young, whose genuine signature appears to the hereto attached certificate of acknowledgment, is, and was at the time of signing the same, a notary public duly commissioned and qualified in and for said county, and that his official acts as such are entitled to full faith and credit.

Witness my hand and seal of office, at office, this 8th day of January, A. D. 1878.

223 JAMES REILLY, *Clerk*,
By JNO. J. SHEA, *D. C.*

STATE OF TENNESSEE, }
Shelby county. }

The foregoing instrument, with clerk's certificate, was filed in my office for registration on the 8th day of Jan'y, 1878, at 4.15 o'clock p. m., and noted in note-book No. 9, page 48, and was recorded on the same day.

H. W. GRIEBEL,
Register.

W. Z. Mitchell, G. T. McKinney, et al., to R. C. Daniel.—Copy of Lease.

STATE OF TENNESSEE, }
Shelby county. }

224 I, Fred R. Hunt, register of said county, hereby certify the enclosed 6 pages to be a full, true and perfect copy from the records of my office of a lease from G. T. McKinney et al. to R. C. Daniel, of record in chattel book No. 13, page 82.

Witness my official signature and seal, at office, this 30th day of June, 1880.

F. R. HUNT, *Register*,
By J. A. O. BROUGHTON, *D. R.*

For Metcalf and Walker; fee $2.25.

225 This article of agreement witnesseth: That John M. Lea, R. B. Lea, and Overton Lea, who is hereinafter designated as party of the first part, rents and leases to R. C. Daniel, who is hereinafter designated as party of the second part, for the period of six years from this date, certain lots of ground situate in the county of Shelby, state of Tennessee, and described as follows, to wit: Part of county lot 499 on the plan of Memphis, beginning at a point in the north line of Adams st. one hundred feet west of the west line of High street; running thence westwardly on the line of Adams st. one hundred feet, more or less; thence northwardly on a line parallel to High street 148½ feet; thence eastwardly on a line parallel to Adams street 100 feet, more or less; thence southwardly 148½ feet to the beginning. Also a lot, part of county lot 499, begin-
226 ning at a point on the south side of Washington st. 120 feet west of High street; running thence west on Washington st. eighty (80) feet, more or less, to the west line of Lea's lot; thence back between parallel lines, parallel to High street and 80 feet distant from each other, 148½ feet to an alley, public or private, and covenants that the party of the second part may have and possess the same against all lawful claims during the full term of this lease. In consideration whereof the said party of the second part, for rent thereof, agrees and hereby becomes bound to pay to the party of the first part the sum of three hundred and seventy dollars, due and payable on the first day of January each and every year during the term of this lease. The said party of the said part covenants and agrees
227 to and with the party of the first part that he will pay and discharge all taxes, charges, railroad and school tax, and all other assessments which may be imposed or levied on said lot of ground or the improvements on the same, by the state, city, county, or any other authority whatsoever, including the paving of streets and alleys, to make pavements and sidewalks, prevent and avoid nuisances, and in short to do and perform any and all things at the second party's expense which would, in case this lease were not made, be required of the first part as owner of the ground, and to deliver said lot or parcel of ground to the party of the first part at the expiration of this lease the entire lot elevated above the grade of surrounding streets and alleys, and free from all manner
228 of nuisance. It is expressly agreed by and between the parties to this contract that in case all taxes and assessments are not promptly paid during the current year, no matter in whose name the lot may be listed, or in case the rent as herein stipulated, or any part of the same, should not be punctually paid at maturity, or in case any matter or thing covenanted in this instrument to be done and performed by the party of the second part should not be so done and performed, then this lease is to be forfeited at the option of the party of the first part, and he may declare the same at an end, and re-enter upon the premises as of his former estate, and take the same in his own right, with all the improvements on the same,

and expel the party of the second part, and all
229 other occupyers of the same; and a lien is hereby granted by the party of the second part and retained by the party of the first part upon all the improvements that are now or that may at any time hereafter be put on said lot by the party of the second part or any one for or under him for the full satisfaction of all rent, tax or any other cause of action that may accrue to the party of the first part, and in case the said party of the first part chooses to enforce a forfeiture of this lease for non-payment of rent, tax, or other cause, it shall devolve upon the party of the second part to prove that the terms of the lease have been complied with and formal demand of rent or tax on either the premises or elsewhere, or formal
230 notice on the premises or elsewhere is waived by the party of the second part, and the mere fact that the rent or tax is due and unpaid and that the party of the second part has not complied with this contract shall be enough to enforce a forfeiture of this lease if the party of the first part chooses to do so.

It is agreed that the party of the first part may keep the lot listed for taxes in his own name and pay the taxes or any other legal charges upon the lot to the officer or person authorized to receive the same, in which case the party of the second part agrees and hereby becomes bound to pay the same to the party of the first part, and the failure to do so shall work a forfeiture of this lease in the same manner as a failure to pay rent and the production by the party of the first part of the tax
231 collector's receipt showing the fact shall be enough to prove the fact, and enforce a forfeiture if the part of the first party chooses. Any improvements except sidewalks, pavements, and cisterns made by the party of the second part on the premises may be removed at the end of this lease, provided all obligations contained in this have been performed. Should the lot be appropriated by law or other authority for public uses or purposes, this lease is immediately to end and determine, and the value of such improvements as belong to him are to go to the party of the second part, and the value of the value of the ground and such improvements as belong to the party of the first part shall go to him. A portion of the foregoing leased premises having been heretofore leased to A. W. McConnell and by him assigned to W. Z. Mitchell, and by said Mitchell to R. C. Daniel, is by said Daniel surrendered to said Lea with the payment of rent from March 3d, 1877, to January 1st, 1878, and of the taxes for the year 1877. Another portion heretofore leased to Frank Lally, and by him assigned to said Daniel, is also surrendered to Lea, with the payment of the taxes thereon for the year 1877.

In testimony whereof we have hereunto set our hands and affixed our seals this 1st day of January, A. D. 1878.

JOHN M. LEA. [SEAL.]
OVERTON LEA. [SEAL.]
ROBERT B. LEA. [SEAL.]

[Copy.]

Original signed R. C. Daniel.

233 S. B. STEERS
vs. } 329.
R. C. DANIEL et als.

The deposition of Mrs. Edmonia P. Daniel, taken on behalf of cross-complainants in the above entitled cause on this 26th day of June, 1880, in the town of Bolivar, Tenn.

Int. 1. State your residence and relationship to R. C. Daniel, Mrs. Lowry, Mrs. Craig, and Mrs. Hanly, parties to the above cause.

A. I am the wife of R. C. Daniel, and with him am boarding in Bolivar, Tenn., where we have been for several months. I am sister-in-law of the ladies named.

Int. 1. State whether or not you ever saw any letters from
234 either of said ladies addressed to your husband, touching investments of funds in the cotton compress business in Memphis; if so, state the dates and contents thereof as near as you can.

A. I have seen a letter addressed to him from Mrs. Craig and Mrs. Hanley each. I saw them about a year ago, as well as I can remember. They were dated in the summer of 1877. Mrs. Craig's from Nicholsvill, Ky., and Mrs. Hanley's from some place in Ky.; the post-office I do not remember. She was then absent, I believe, from Nicholasville.

The contents or purport of the letters were that they had received a letter from Mr. Daniel on the subject of investing their
235 monies in his hands in the compress business, and saying that it met with their approbation that he should do so.

EDMONIA P. DANIEL

Oath and all informalities waived, reserving only exceptions for incompetency and irrelevancy, and cross-examination by Humes and Poston also waived.

GANTT & PATTERSON and
METCALF & WALKER,
Sol's for X Compl'ts.

(Endorsed:) No. 329; Circuit Court of the United States, western district of Tennessee; S. B. Steers *vs.* R. C. Daniel et al.; deposition of Mrs. E. P. Daniel; filed June 30, 1880; Bell W. Etheridge, clerk; W. B. Weisiger, d. c.

236 In the Circuit Court of the United States for the western district of Tennessee, at Memphis.

S. B. STEERS et al.
vs. } No. 329. Equity.
R. C. DANIEL et al.

Depositions of John T. Burr, Jno. M. Larkin, C. M. Waldran, J. J. Busby, S. A. Taylor, H. Furstenheim, D. T. Porter, T. J. Latham, Tom Gale, Amos Woodruff and J. F. Sellers, witnesses for def't

A. H. H. Dawson, and cross-compl't's in the above case, taken by consent on the 28th day of June, 1880, and continued from day to day until finished at 36 Madison street, Memphis, Tenn., in the presence of Humes and Poston for A. H. H. Dawson, and Metcalf and Walker for cross-complainants.

237 JOHN T. BURR, witness for A. H. H. Dawson, being first duly sworn, deposes and says:

Int. 1st. Please state your age, name, residence and occupation; do you know def't R. C. Daniel, and how long have you known him?

A. Age, 38; name, John T. Burr; residence, Memphis, and occupation, manager of the compress co.; I know him and have known him for 6 or 8 years.

Int. 2. Have you known him intimately or otherwise?

A. Not intimately, only in a business way.

Int. 3. Do you or not know the general reputation of R. C. Daniel in this community for honesty and veracity? If so, state whether it is good or bad.

A. Yes, I think I know his general reputation; I don't think it is good.

238 Q. 4. With your knowledge of his reputation among friends and acquaintances, would you believe him on oath?

A. I don't think I would.

Cross-examination:

x-q. 1st. Would you or not believe him on oath in a court of justice in a case where he had no personal interests, and that oath given upon a sick bed of perhaps last illness?

A. I might; I would be guided by circumstances; when I say I would be guided by circumstances I mean, for example, were I a juror and the person in question to make a sworn statement, even if not directly interested, but with a possible or prospective interest, I would reserve to myself the judgment as to the verity of his testimony.

239 Int'g. 3. So you mean to say, do you not, that under and all circumstances you would not be prepared to say you would not believe him under oath in a court of justice?

A. I do not mean to say that he will invariably tell what is not true.

Re-examination:

Int. 1st. In a case where his sisters were interested, and he has lost their , and an effort to secure it was to be mainly established by his testimony, do you think he would be worthy of belief on oath?

I should think him interested, and doubt if I would credit his testimony.

Q. 2d. In matters where he is mainly interested, would you or not believe his statements under oath.

No, sir; I would not.

JOHN T. BURR.

240 Sub. and sworn to before me this 28th June, 1880.

F. P. POSTON, [SEAL.]
Notary Public.

And JOHN M. LARKIN, being next duly sworn, deposes and says:

Int. 1st. State your name, age, residence, and occupation.

A. John M. Larkin; Memphis; age about 51; am a collector at present.

Int. 2d. Do you know R. C. Daniel, and how long have you known him; do you know his general reputation for truth and veracity in this community?

A. I know him and have known him about 15 or 16 years.

241 I did not know him particularly or intimately until the "press" matter arose between us. All that I know about his reputation is what others have told me; this covers the period before I was connected or associated with him.

Q. 3d. What is his reputation for truth and veracity; is it good or bad?

(Objected to for incompetency.)

A. My personal experience with him is that where he was interested I would not believe him unless I knew what he said was true. I should say it was bad.

(Objected to for incompetency.)

Int. 4th. From such reputation and character, would you believe him on oath in a court of justice?

(Objected to for incompetency.)

A. I could not believe any man who has acted as he did.

242 Int. 5th. State whether or not you were connected with Daniel in the cotton compress during the time he was building and operating it, and for how long.

A. I was connected with him from the time he was negotiating for the press until its seizure.

Int. 6th. Do you know the source from which Daniels got the money to buy, erect, and operate the press?

A. He held out to me from the first that he had $80,000.00 of his own money to carry the enterprise through.

(Statements made by witness objected to as incompetent and irrelevant for any purpose.)

Q. 7th. What was said by him *by him* as to the source from which the money came that was used in the purchase of the press,

243 and did he mention any one else as interested with him in the enterprise?

(Objected to for irrelevancy and incompetency.)

A. He told me nothing as to the source from which the money

came further than that the money, $80,000.00, was his own. (To last part of question he answers:) No, sir.

(So much of the foregoing question and answer objected to as relates to Daniel's statements of, objected as incompetent and irrelevant to this cause, or for his impeachment, if that be the purpose.)

Cross-examined:

x-int. 1. State whether or not your estimate of the character of R. C. Daniel is based principally upon your personal transactions with him?

244 A. My experience with him confirms the reports of those who have had longer acquaintance with him.

Int. 2. Have you had not had a personal controversy with him in regard to the compress business?

A. Yes, sir.

Int. 3. Is not your opinion based upon particular facts related to you by persons who have had some business controversy with him?

A. They had nothing to do with the formation of my own opinion formed from my own experience.

And further deponent saith not.

J. M. LARKIN.

Sub. and sworn to this June 28th, 1880.

F. P. POSTON. [SEAL.]

245 And C. M. WALDRAN deposes and says:

Int. 1st. State your age, residence, occupation, and how long you have known R. C. Daniel.

A. Am of lawful age; Memphis; cotton compress business; have known him 6 or 7 years.

Q. 2d. Do you or not know the general reputation of R. C. Daniel for truth and veracity among his acquaintances?

A. Among some I do. I don't know all his acquaintances.

Q. 3d. Is such reputation good or bad?

A. Bad.

C. M. WALDRAN.

Oath waived.

246 And J. J. BUSBY deposes and says:

Question 1st. State your age, residence, and occupation. Do you know R. C. Daniel, and how long have you known him?

Answer. Age, 49; residence, Memphis; am a merchant; I do and have known him some ten years.

Q. 2nd. Do you know his reputation in this community among his acquaintances for truth and veracity, and is it good or bad?

A. I have heard men who were not friends of his say things very prejudicial to his character; they were acquaintances of his, but enemies.

Q. 3rd. Now, from their statements, was his character for truth and veracity good or bad?

247 A. Judging from their statements I think it was bad.

Q. 4th. From such reputation, would you believe him on oath in a court of justice?

A. Yes, sir; I would.

Q. 5th. Upon what basis would you put credibility in his oath if his reputation is what you say his acquaintances say of it?

A. From his great appreciation of the sanctity of an oath.

(I refer this answer particularly to R. C. Daniel.)

Q. 6. In answer to qu. 2nd you say you have heard his enemies say things prejudicial to his character; do you mean to say that you have only heard his enemies make such statements, or that you judged they were his enemies from their making these statements?

A. I regarded them as his enemies.

248 Q. 7th. Did you know that every man whom you heard make such prejudicial statements were his enemies?

A. I did not.

Q. 8th. From your knowledge of him as a man.

(Question withdrawn.)

Q. 9th. Have you heard prejudicial statements in regard to the general reputation of R. C. Daniel for truth, veracity, and integrity from many persons in this community?

A. I have not.

Cross-examined:

x-intg. 1. You say in a previous answer that you have heard persons speak disparagingly of him, whom you regarded as his enemies. State whether or not you ever heard J. M. Larkin so speak of him, and how you regarded him and why?

(Objected to as incompetent and irrelevant.)

249 A. I heard J. M. Larkin speak of him quite frequently in a very prejudicial way, and I regarded Larkin as a very bitter enemy to Mr. Daniel. He made threats against him in my presence on account of some business transaction in regard to a compress in which he claims to have been very badly damaged.

Re-examination:

Q. 1st. What facts did Larkin state as the grounds of his grievance against Daniel?

A. He claimed that he had failed to comply with his agreement as to building and operating a cotton compress between Adams and Washington streets, and that he had been greatly damaged thereby, and that he had lied and misrepresented to him about it.

250 X-examined:

What conclusion did you come to regarding the facts and Larkin's statement of them?

(Objected to by Dawson's att'y as incompetent and irrelevant.)

A. I came to the conclusion that he was an ignoramus on the subject of compresses.

And further deponent saith not.

J. J. BUSBY.

Oath waived.

251 And S. A. TAYLOR deposes and says:

Question 1st. State your age, residence, and occupation.

Answer. Am nearly 39; Memphis; am a book-keeper.

Q. 2nd. Are you acquainted with R. C. Daniel, and how long have you known him?

A. I am; have known him since 1865.

Q. 3d. Have you ever been engaged in any business with him; if so, when, where, and during what period of time?

A. I was engaged with him in the Merchants' National Bank and State National Bank of Memphis. He was president of the banks, and I was book-keeper for about 6 years, and up to the time he left the State National Bank about the year 1875.

252 Q. 4. Do you know his general reputation for truth, veracity, and integrity in this community among his acquaintances?

A. I do.

Q. 5th. What is that reputation, is it good or bad?

A. Bad.

Q. 6th. From such reputation, would you or not believe him in testifying under oath in a court of justice?

A. I would not if he was interested.

Q. 7th. What would you say in answer to said question if his interest was as to whether certain property of his should go to his sisters or his creditors?

A. I would not believe him.

X-examined:

Int. 1. Upon what is your opinion based?

A. Upon a transaction of stock he had with the State National Bank.

Int. 2. Was that transaction under oath in a court of
253 justice?

A. There were depositions taken in regard to it; R. C. Daniel's, John Freeman's, and mine.

Int. 3d. Did you and Daniel swear the same way about the matter?

A. No, sir; we did not.

Re-examination:

Q. 1st. Where has Daniel lived for the last 8 or 10 years?

A. Previous to his connection * * * the banks he lived in New York; during his connection with the banks he lived in Mem-

phis, and kept a house here until some time in 1878, when he turned it over to Capt. Coffey.

Q. 2nd. In answer to question 4 you state that you, from your knowledge of the general reputation for truth and integrity
254 in this community you would not believe him on oath in a court of justice, and in answer to Mr. Metcalf's question "upon what is your opinion based?" you say "upon a transaction of stock he had with the State National Bank."

Now state whether your opinion is based alone upon that stock transaction or upon that connected with his general reputation for truth and veracity in this community?

A. It is based upon the stock transaction as far as my personal knowledge is concerned, and on the cases of Irvine & Co., Furstenheim, and O. B. Parker, (Furstenheim & Parker was one and the same case) from general reputation.

Q. 3d. To what extent, if any, did these cases involve his integrity and veracity?

255 (Objected to by x-complainants for incompetency and irrelevancy.)

A. To a misstatement of facts, and also his integrity.

Q. 4th. To what extent, much or little, have you heard his truth, veracity, and integrity criticised by his acquaintances in this city in whom you had confidence?

A. By a great many.

Q. 5th. To what extent, if any, is your opinion as to his credibility as a witness founded upon what you have heard from his acquaintances in whom you have confidence?

A. I would not believe him on oath in a court of justice.

256 Re-examination:

x-int. 1. In answer re-examination to question 1, you say the case of Furstenheim & Parker was upon general reputation; you mean to say, do you not, that it was from hearsay in the bank in which you were then an employee?

A. Not altogether in the bank.

x-int. 2nd. You were an employee in the bank and at the time these transactions occurred, were you not?

A. Yes, sir.

x-int. 3rd. Were they not suits against the bank growing out of bank transactions in which Mr. Daniel was at the time president and you book-keeper?

A. They were.

257 x-int. 4th. Did you ever read Mr. Daniel's depositions in the said suits of Irvine and Furstenheim, and are you familiar with the facts and details of said suits?

A. I did not; I do not know whether he gave depositions in said suits.

x-int. 5th. Do you mean to say the bank justly owed the Irvine and Furstenheim claims against the banks?

(Objected to by Dawson.)

A. I do not.

x-int. 6th. Then why do you say Daniel made misstatements; were not his statements to the effect that the bank did not owe the claims?

258 A. I do not know what his evidence was.

x-int. 7th. Did you not furnish the statements of account upon which he gave his evidence?

A. I did not furnish to Mr. Daniel any statement of these accounts.

x-int. 8th. Do you mean to say that you furnished no statements of account in either of said suits for evidence therein?

A. I furnished a statement in the Irvine and Parker suits, but not for Mr. Daniel, but for the bank.

x-int. 9th. Daniel was the president of said bank at the time, was he not?

A. I don't remember whether he was or not at that time.

259 x-int. 10th. At any rate he testified on behalf of the bank, did he not, and were not these statements furnished on behalf of the bank?

A. I have just said I did not know whether he testified or not.

x-int. 11th. Int. 5 is as follows: To what extent, if any, is your opinion as to his credibility as a witness founded upon what you have heard from his acquaintances in whom you have confidence, to which you answer, "I would not believe him on oath in a court of justice." Now state whether or not your opinion is based upon said three transactions.

A. It is based upon said three transactions.

260 (The x-complainants here insist upon an objection to a further examination.)

Re-examination:

Q. 1st. Do you mean that your opinion as to his credibility is founded altogether on what you yourself know about him, or upon that in connection with what you have heard about him from others?

A. It is founded on both.

And further saith not.

S. A. TAYLOR.

Sub. and sworn to before me this 28 day of June, 1880.

F. P. POSTON, [SEAL.]
Notary Public.

Adjourned by consent to June 29th, at 11 o'clock.

261 JUNE 29TH, 11 o'c. a. m.

Present: Counsel as before.

HENRY FURSTENHEIM, being next duly sworn, deposes and says:

Question 1st. State your age, residence, and occupation?

Answer. 50 years; Memphis; am a merchant.

Q. 2nd. Do you know R. C. Daniel, who was at one time president of the State National Bank, or the Merchants' National Bank; if so, how long and where?

A. I do; and have known him about 8 years or more in Memphis, Tenn.

Q. 3rd. How long have you lived in Memphis?

A. 20-odd years.

262 Q. 4th. Would you believe him on oath while testifying as a witness?

A. I certainly would not if he were interested.

Q. 5th. If he was the main witness whose evidence would decide whether certain property of his should go to *to* his sisters or his creditors, would you believe him on oath, in a case where he had made a deed of trust conveying the particular property to secure his sisters to prevent his creditors getting it, and was active in setting up the rights of his sisters as against his creditors; would you believe his evidence on oath in support of his sisters under those circumstances?

263 A. He having misrepresented matters to me before by misrepresentation, I lost confidence in him, but I feel unable to decide this question.

X-examined:

x-int. 1. Is not your opinion of him based principally upon a misrepresentation made to you in one transaction only, to wit, your transaction with O. B. Parker and the State National Bank?

A. It is.

x-int. 2. But for that transaction are you prepared to say you would not believe him on oath in a court of justice?

Re-examination:

Q. 1st. What misstatement is it you refer to as being made by him to you?

264 A. He made a deliberate statement to me about a fact in a business transaction, and about a year afterward in his deposition he testified directly the contrary to what he had stated to me.

Q. 2nd. Have you or not heard other men in this community in whom you have confidence make statements prejudicial to the truth and integrity of R. C. Daniel?

A. I believe I have.

Q. 3rd. Many or few?

A. I don't remember.

And further saith not.

H. FURSTENHEIM.

Sub. & sworn to before me this 29th June, 1880.

[SEAL.] F. P. POSTON,
Notary Public.

265 And thereupon, C. W. Metcalf being present, the attorneys of A. H. H. Dawson offered him as a witness, and the notary public proposed to swear him, and thereupon said Metcalf declined to be sworn as a witness, and also declined to give evidence in the cause.

I therefore refer the question to the court for its action.

[SEAL.] F. P. POSTON,
Notary Public.

And GEO. GANTT, being next duly sworn, deposes and says:

266 And D. F. PORTER, a witness on behalf of x-complainants, being duly sworn, deposes and says:

Question 1st. State your name, age, residence, and occupation; and do you know R. C. Daniel, and how long have you known him?

Answer. D. T. Porter; 53 years; Memphis; am a merchant, and president of the taxing district of Shelby county; I do, and have known him for about 21 years.

Q. 2nd. State whether or not you know the general reputation of R. C. Daniel in this community for truth and integrity.

A. So far as I know, it is good.

(Counsel for A. H. H. Dawson object, because answer is not responsive and is irrelevant and immaterial.)

267 Q. 3rd. State whether or not, from such reputation, you would believe him on oath in a court of justice?

(Counsel for A. H. H. Dawson object to above question and the anwer thereto, because no ground laid for it.)

A. Yes, sir; I would.

And further saith not.

D. T. PORTER.

Subscribed and sworn to before me this June 29th, 1880.

F. P. POSTON, [SEAL.]
Notary Public.

268 And T. J. LATHAM, a witness for x-comp'ts, being next duly sworn, deposed and says:

Question 1st. State your age, residence and occupation.

Answer. Age, 48; Memphis; president of the Memphis Water Company.

Q. 2d. State whether you know R. C. Daniel, and how long you have known him.

A. I do, and have known him about 10 years.

Q. 3d. State whether or not you know his general reputation in this community for truth and veracity.

A. I cannot say that I know what opinion is generally entertained of R. C. Daniel in this respect, for the reason that I have not

269 heard it discussed.

Q. 4th. State whether or not, socially and in a business way,

you have not during your acquaintance with Mr. Daniel been thrown among his general acquaintances in this community constantly or frequently.

A. I have with a good many.

Q. 5th. Now, then, state what was his reputation for truth and veracity among such.

A. With those among whom I associated and met with, it was good, so far as I know.

Q. 6th. State whether or not you ever heard his reputation for truth and veracity questioned.

A. I have not, unless possibly by one or two who had some
270 business misunderstanding with him and were offended.

Q. 7th. State whether or not from his general reputation, to the extent that you are acquainted with it as above mentioned, you would believe him on oath in a court of justice.

A. I would, sir; I could not do otherwise.

Cross-examination:

x-q. 1st. Were the persons whom you heard speak of him unfavorably to his truth and veracity, persons in whom you had confidence?

A. I did not say that I had heard anything unfavorable to his truth and veracity; what I meant to say was that I had an indefinite remembrance of hearing complaints against him as to some
271 business transactions while president of the State National Bank from parties who claimed he had been unfair towards them. I would state that the way I heard of these things is this: I was a member of the board of directors of the State National Bank, and heard them incidentally while discussing the affairs of the bank. I mean these reflections above referred to were not regarded by me as direct charges against his truth and veracity, and came to my knowledge in too indefinite a manner to directly impress me.

Q. 2d. Is not your statement that you would believe him on oath in a court of justice founded rather upon your want of knowledge that he is unworthy of belief than because you know him to be worthy of belief?

272 A. I have very little positive personal knowledge either way, though some opportunity from business relations with him, and from such as before stated, I would believe him on oath as stated above.

Q. 3rd. Is not your belief that he is worthy of credit when testifying on oath founded principally or mainly upon your idea that you would believe any man under such circumstances whom you did not know to be unworthy of credit?

A. In addition, as above implied, I state that from some business relations and personal knowledge of Mr. Daniel I would believe him as above stated, besides the main ground as stated in the question.

273 Q. 4th. Were your business relations such as gave him any opportunity, without detection, to act dishonestly or untruthfully with you?

A. Yes, sir; I never had any transactions of much consequence or of very great importance with Mr. Daniel.

And further saith not.

T. J. LATHAM.

Sub. and sworn to before me June 29, 1880.

[SEAL.] F. P. POSTON,
Notary Public.

274 And TOM GALE, being next duly sworn, deposes and says:

Question 1st. State your age, name, residence, and occupation, and how long you have so resided.

Answer. 64 years; Memphis; merchant; have resided in Memphis for about 40 years.

Q. 2nd. State whether or not you are acquainted with R. C. Daniel, and if so, how long have you known him, and where?

A. I am acquainted with him and have been for about 20 years; have known him in Memphis most of the time.

Q. 3rd. State whether or not you know the general reputation of said Daniel in this community for truth and veracity?

275 A. From all I know of him I regard him as a man of truth and veracity.

Q. 4th. State whether or not you have had general intercourse and association with his acquaintances, and whether or not, from such intercourse and general reputation formed therefrom, you would believe him on oath in a court of justice.

A. I have had general intercourse with his social friends, but not much with his business friends; I would believe him on oath in a court of justice.

Q. 5th. State whether or not you have heard R. C. Daniel spoken of generally among his social and business acquaintances, and, if so, state whether or not, from your opinion formed therefrom,

276 you would believe him on oath in a court of justice.

A. I have heard him criticised by business men incidentally but not generally. I would believe him on oath in a court of justice.

Q. 6th. State whether or not the criticism you speak of has been confined principally if not entirely in connection with his relations to the State National Bank and Merchants' National Bank, and his associates in office therewith.

A. I believe it was, entirely; I never heard any other.

Q. 7th. State whether or not your opportunity of knowing his general reputation among his friends and acquaintances has not been full and ample to enable you to form an opinion as to his

277 *his* truth and veracity.

A. I think my intercourse with him was full and ample enough to enable me to form a correct opinion as to his character for

truth and veracity, but I have had no business transactions with him except our church finances, in which I found him correct.

Q. 8th. State the extent of your opportunity of forming an opinion among his friends and acquaintances upon which you base your opinion that you would believe him on oath in a court of justice.

A. I have answered that my transactions and acquaintance with him was only in social and church relation.

Q. 9th. State the extent of your intercourse and association
278 with his acquaintances in this community during the time you have known R. C. Daniel.

A. My intercourse with his friends, I suppose, has been pretty general, and I have never heard his business matters criticised, except in the particulars named.

Cross-examination:

x-q. 1st. Is it not your idea that you ought to believe any man under oath unless you positively know him to be unworthy of credibility?

A. Yes.

x-q. 2. Now is not your idea about believing Daniels in testifying under oath founded mainly upon that idea?

A. No, sir.

x-q. 3rd. Have you ever had any transactions with him in
279 which there was any inducement for him to act dishonestly or untruthfully?

A. Don't think I have; I loaned him $500.00 when he was building the compress, as he said he wanted it to pay hands.

x-q. 4th. Do you know of his being engaged in any business in Memphis since the close of the war, except in connection with the Merchants' National Bank, the State National Bank, and the cotton compress which he built on Washington street in 1877 or 1878?

A. I don't know that he was engaged in any business except those mentioned.

x-q. 5th. Don't you know that he has been criticised for dishonesty and untruthfulness by parties who had business trans-
280 actions with him in connection with said banks and compress?

A. I have heard him criticised in connection with all three, but not knowingly, from persons who had business transactions with him.

x-q. 6th. Don't you know that he has been criticised in this community for dishonesty and untruthfulness in every business enterprise he has been engaged in here since the war?

A. I do not.

And further saith not.

TOM GALE.

Sub. and sworn to before me this June 29th, 1880.

[SEAL.] F. P. POSTON,
Notary Public.

281 Adjourned to June 30th, 1880, at 8½ o'clock a. m., at request of counsel for A. H. H. Dawson, the hour of 6¼ p. m. having arrived, counsel for cross-compl'ts objecting.

JUNE 30*th*, 1880—8½ o'c. a. m.

Counsel present as before.

And AMOS WOODRUFF, witness for A. H. H. Dawson, being next duly sworn, deposes and says:

Question 1st. State your age, residence, and occupation.

Answer. 60 years; Memphis, Tenn.; am a merchant and banker.

Q. 2nd. Are you acquainted with R. C. Daniel, who was at one time president of the Merchants' National Bank of Memphis? If so, how long have you known him and where?

282 A. I am acquainted with Mr. Daniel, and have known him since 1868, in Memphis, Tenn.

Q. 3rd. Do you or not know his general reputation for truth, veracity, and integrity among his acquaintances in this community; and if yea, is it good or bad?

A. I am pretty well acquainted with his reputation in these respects in Memphis; it is bad.

Q. 4th. From your knowledge of his general reputation in those respects would you or not believe him in testifying under oath in a court of justice?

A. If he was largely interested in the mattter in controversy, from his general reputation I would be unwilling to believe him under oath.

283 Q. 5. State what, if anything, you know in reference to a credit of R. C. Daniel with the Fourth National Bank of Memphis, as follows: Aug. 3rd, 1876. By Woodruff, $5,000.

A. On that day I paid a note of $5,000 at some bank—I don't remember which—drawn by Jno. J. Freeman and endorsed by myself. I don't know to whose credit the proceeds of that note went.

Q. 6. Please state the date of said note and the time it had to run to maturity.

A. It was dated July 31st, 1875, and due 12 months after date.

Q. 7th. State what, if anything, you know in reference to
284 the party to whom said note was to be passed, or with whom it was to be discounted or used.

A. At the time the note was made Mr. Freeman, the maker of the note, came to me and said that he could get $5,000.00 from R. C. Daniel on twelve months' time if I would endorse his paper, and at Mr. Freeman's request I made the endorsement.

Cross-examination by x-comp't:

x-q. 1. Is the original of said note now before you?

A. It is.

x-q. 2. Please set forth a copy of the same with endorsements.

A. It is as follows: $5,000.00; Memphis, Tenn., July 31, 1875.—

Twelve months after date I promise to pay to the order of A. Woodruff five thousand dollars, negotiable and payable at the State
285 National Bank of Memphis, Tenn.

For value received, with interest at the rate of 10 per cent. per annum from maturity until paid.

Due— (Signed) JNO. J. FREEMAN.

(Endorsed:) A. Woodruff, Mrs. S. H. Craig, holder. [The endorsement of Mrs. S. H. Craig, holder, is in pencil; the rest in ink.]

Q. 3. Who produced this note for your inspection?

A. Mr. Poston.

x-q. 4. State where it has been since you paid it?

A. It has been in my possession, in a tin box in the safe since I paid it, and up to about 2 months ago, when Mr. Freeman
286 called at my office and asked me if I would allow him to look at the note, which I did. He then requested me to allow him to take the note for a short time, agreeing to return the same to me whenever I should call for it. I have not seen the note from the time he took it until this morning.

x-q. 5. Have not yourself and Mr. Daniel been for some time past and are you not now at enmity with each other?

A. There has been but little friendship or intercourse between us for the last few years.

x-q. 6. Has there been any friendship at all?

287 A. I can't say that there has; we have merely spoken to each other in passing, and that is all.

x-q. 7. Please state your reasons for saying that in a case where Daniel was largely interested you would not believe him on oath.

A. From 5 to 8 years since I was a director in the Merchants' National Bank, of which Daniel was president, and because familiar with a number of his business transactions and from his equivocations and misstatements that he would make I lost confidence in his honesty and integrity. In trying to settle up some of these transactions a number of people have stated to me that they would not believe Mr. Daniel on oath; from these facts I made the answer I did.

288 x-q. 8. Have not yourself and Mr. Daniel had extreme differences in business transactions?

A. We have.

Re-examination:

Q. 1. What did these differences grow out of?

A. Grew out of the transactions in the bank. I could not approve of the course he was pursuing. He did not act truthfully in the matter and it was injuring the bank, and I thought it my duty to oppose him and protect the interests of the bank.

Q. 2. What is the state of your feelings towards him; are you so biased that you cannot treat him impartially in giving your
289 evidence against him?

A. I have great sympathy for Mr. Daniel and would not do

him an injury. It is with the greatest reluctance that I give this testimony, and would not have done so were I not under a subpœna to testify.

Cross-examination:

x-q. 1. Was not Mr. Daniel removed from the presidency of the State National Bank and you elected in his stead?

B. Yes, sir.

And further saith not. A. WOODRUFF.

Sub. and sworn to before me June 30th, 1880.

F. P. POSTON,
Notary Public.

290 J. F. SELLERS, being duly sworn, deposes and says:

Question 1. State your age, residence, and occupation.

Answer. 40 years; Memphis; and am a bank teller.

Q. 2. State what connection, if any, you had with the Fourth National Bank of Memphis, and for what length of time?

A. From the starting of the bank in 1873 until Jan'y, 1877, I was connected with it as teller and general book-keeper; then I went back after the fever in 1878 in the same capacity, and remained until about July 10, 1879, the close of the bank.

Q. 3. State what account, if any, R. C. Daniel had with the
291 Fourth National Bank, and during what period of time.

A. I recognize the annexed statement of acct. as a true and correct copy of his account from the books of the bank, which I make Exhibit "A."

Q. 4. State what, if any, amounts were due at any time to the credit of Mrs. S. H. Craig on the books of the said bank.

A. I don't find on books of the bank from and including 1875 down to the close of bank any amount of money credited to Mrs. Craig, and I don't believe there ever was any.

And further deponent saith not. J. F. SELLERS.

Sub. and sworn to before me this June 30, 1880.

F. P. POSTON, [SEAL.
Notary Public.

292 X-examined:

x-int. 1. In answer to int'y 4 above you say you do not find any money deposited to the credit of Mrs. Craig during the period therein stated. Now state, then, whether you find during said period a deposit of any notes for collection to her credit; if so, what?

A. I do. I find a note for $5,000.00 made by J. J. Freeman, dated July 31, 1876, payable twelve months after date to the order of A. Woodruff, and by him endorsed, deposited for collection for her account, I don't —— by whom, July 11th, 1876, as per pass-book, a true copy of which book I file herewith as Exhibit "B" to my deposition.

293 x-int. 2. Was said note paid; if so, when and to whose account were the proceeds credited?

A. I don't know, but I believe it was to the credit of R. C. Daniel, Aug. 3, 1876.

Int'y x 3. How did it happen to go to the credit of his account?

A. I don't know, but it should have gone to her credit according to the pass-book. I do not know personally anything about it, and am only testifying what would have been the ordinary course of business.

Re-examination:

Q. 1. What amounts of money, if any, were ever to the credit of Mrs. S. H. Craig in the Fourth National Bank of Memphis?

294 A. I don't see any amounts credited to her. I have examined the books from the beginning to the end of the bank, and I don't find any.

Q. 2. What checks, if any, were drawn by Mrs. S. H. Craig on said bank and paid by it?

A. I don't know. If she had drawn any which were paid they should have been charged to her ac., unless they were charged to Daniel; there is no account with her on the books of the bank except the one note for collection, so far as I find.

Q. 3. Is it customary, or the contrary, for paper to be left

295 with the bank for collection for the account of one person, and when collected the proceeds to be passed to the credit of another person?

A. No, it is not customary, unless by instructions or mistake.

Cross-examination by x-compl't:

Q. 1. From whom, according to the course of the banks, should said instructions come in order to be recognized by the bank?

A. The instructions should properly come from the owner of the note, though sometimes they might be recognized from the party depositing it.

I would suppose the owner to be the party for whose account the note was left for collection. I don't know that I ever

296 saw or knew Mrs. S. H. Craig.

The entry of the note for collection in the original pass-book is in the handwriting of Robert L. Hammock, then connected connected with the bank, who is and has been dead for some years.

And further saith not.

J. F. SELLERS.

297 [Copy.]

Exhibit "B" to deposition of J. F. Sellers.

Fourth National Bank of Memphis with Mrs. S. H. Craig.

Cr.

1876, July 11.—For collection:

Jno. J. Freeman, note for July 31, 1875, at 12 mos., $5,000.00.

298 *Exhibit "A" to deposition of J. F. Sellers.*

R. C. Daniel in account with Fourth National Bank, Memphis.

DR.				CR.		
1876.				1876.		
Aug. 11	2 ch'cks	$300 00		Aug. 3	Woodruff	$5,000 00
Sept. 14	1	466 65		Oct. 3	Disc't	491 80
18	1	51 00		Nov. 11		825 36
20	1	25 25		27		1,200 00
Oct. 4	1	1,500 00		Dec. 4	Disc't	491 25
12	1	12 00				
21	1	40 00				
24	1	100 00				
Nov. 11	1	125 00				
Dec. 4	1	500 00				
18	1	100 00				
	Balance	4,789 51				
		$8,008 41				$8,008 41
Dec. 19	1	$125 00		Dec. 19	Bal	$4,789 51
22	1	6 00		22		2,400 00
23	1	40 00		28	Fees	3 00
1877.				1877.		
Jan. 4	1	75 00		Apr. 23	N. Y	436 71
5	1	50 00				
8	1	50 00				
10	1	209 87				
12	1	100 00				
Feb. 2	2	1,330 22				
5	1	36 65				
12	1	100 00				
27	1	25 00				
Mch. 10	1	25 00				
23	1	1,483 70				
26	1	720 00				
Apr. 18	1	25 00				
21	1	426 71				
May 7	1	10 00				
June 21	1	46 20				
Aug. 4	1	100 03				
13	1	75 00				
Sept. 3	1	143 00				
14	1	206 75				
	Bal	2,220 12				
		$7,629 22				$7,629 22
Nov. 8	1 ch'ck	$30 00		Sep. 22	Bal	$2,220 12
9	1 "	5,000 00		28	Norton	103 75
1878.						
Jan. 3	1 "	40 00		Oct. 13	Stewart	100 00
14	1 "	960 00		Nov. 8	Cy	2,000 00
				1878.		
				Feb. 1	By note	1,606 13
		$6,030 00				$6,030 00

299 The foregoing depositions were taken before me, as stated in the caption, and reduced to writing partly by me and partly by counsel on both sides by consent and in my presence.

And I certify that I am not interested in the cause, nor of any kin or counsel to either of the parties, and that I sealed them up and delivered them to the clerk of the U. S. Circuit Court at Memphis without being out of my possession, except by consent of counsel on both sides, C. W. Metcalf retained them to read them, and delivered them back to me on the morning of June 30th, and were not altered after they were taken.

300 Given under my hand and seal of office this 30th day of of June, 1880.

[SEAL] F. P. POSTON,
Notary Public, Shelby co., Tenn.

Notary Public costs.

Taking 50 pages depositions	12 50
9 oaths and 1 certificate, 50c	5 00
Issuing 3 subpœnas for witnesses	75
Officer serving 3 subpœnas for witnesses	1 50
	$19 75

We consent to immediate payment of fees of F. P. Poston and Lowry W. Humes for taking depositions in this case, out of fund in the hands of the clerk. July 27, 1880.

GANTT & PATTERSON,
Sols. for Freeman & Hanley.
HUMES & POSTON,
Sols for Dawson.

301 STATE OF TENNESSEE, *Shelby county,* } *sct.*

To any lawful officer, greeting:

Summon Amos Woodruff to appear before the undersigned, a notary public of said county, at office, 36 Madison st., instanter, to testify in a suit wherein S. B. Steers et al. are plaintiffs and R. C. Daniel et al. are defendants, on behalf of A. H. H. Dawson, and this you shall in no wise omit under the penalties prescribed by law.

And of the writ make legal service and due return.

Given under my hand and seal 28 day of June, 1880.

[SEAL.] F. P. POSTON,
Notary Public.

(Endorsed:) Executed on the within witness June 29th, 1880. J. E. Frost, c. s. c.

302 STATE OF TENNESSEE, } *sct.*
Shelby county, }

To any lawful officer, greeting:

Summon J. J. Busby and S. A. Taylor to appear before F. P. Poston, a notary public of said county, at his office, 36 Madison st., on the instanter, to testify in a suit wherein S. B. Steers et al. are plaintiffs and R. C. Daniel et al. are defendants, on behalf of the def't A. H. H. Dawson, and this shall in no wise omit under the penalties prescribed by law.

And of the writ make legal service and due return.

Given under my hand and seal 28 day of June, 1880.

THOS. FLEMING, [SEAL.]
J. P.

303 (Endorsed:) Executed by summoning J. J. Busby and S. A. Taylor as the within subpœna directs. J. E. Frost, c. s. c. June 28th, 1880.

Circuit Court of the United States, western district of Tennessee.

S. B. STEERS et al. }
vs. } No. 329.
R. C. DANIEL et al. }

Depositions of John T. Burr, J. M. Larkin, C. M. Waldran, J. J. Busby, S. A. Taylor, H. Furstenhsim, D. T. Porter, T. J. Latham, Tom Gale, A. Woodruff, J. T. Sellers.

Filed June 30, 1880.

BELL W. ETHERIDGE, *Clerk.*
W. B. WEISIGER, *D. C.*

304 UNITED STATES OF AMERICA, }
Western district of Tennessee. }

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1880, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 30 day of June, A. D. 1880, in the following cause, to wit:

S. B. STEERS et als., plaintiff, }
vs. } No. 329.
R. C. DANIEL et als., defendant. }

In this cause came the parties by their attorneys, when the trial thereof was commenced, and there not being sufficient time to conclude the said trial to-day, it is hereby ordered that the further hearing of the cause be postponed until to-morrow morning at 9½ o'clock.

305 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1880, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 1st day of July, A. D. 1880, in the following cause, to wit:

S. B. STEERS et als., plaintiff,
vs.
R. C. DANIEL et als., defendant. } No. 329.

This day came again the parties in this cause by their attorneys, when the further hearing of said cause was resumed, and there not being sufficient time to conclude the said trial on to-day, the further hearing of the said cause is postponed till to-morrow morning at 9½ o'clock.

306 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1880, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 2nd day of July, A. D. 1880, in the following cause, to wit:

S. B. STEERS et al., plaintiff,
vs.
R. C. DANIELS et als., defendant. } No. 329.

In this cause came the parties by their attorneys, when the further hearing of the cause was resumed, and the arguments of counsel having been concluded, the said cause was submitted to the court.

307 UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court, at a regular term thereof begun and held for its May term, A. D. 1880, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 28th day of July, A. D. 1880, in the following cause, to wit:

S. B. STEERS et als., plaintiffs,
vs.
R. C. DANIEL et als., defendants. } No. 329.

This cause came on to be heard this 28th day of July, 1880, on the equity side of the Circuit Court of the United States for the western district of Tennessee, at Memphis, before the Hon. E. S. Hammond, judge, &c., presiding in said circuit court, upon the original and amended bills of complaint of the complainants, S. B. Steers and E. L. Morse, composing the firm of S. B. Steers & Co., and the answers thereto and the judgments *pro confesso* herein,
308 regularly taken by former decrees in this cause, and the subsequent orders and decrees herein, and also on the cross-bill and amended cross-bill of R. C. Daniel, M. T. Lowry and his wife, Eleanor E. Lowry, and Samuel T. Handley and his wife, Fannie E. Handley, and S. Higgins Craig, and the answers and replications thereto, and also on the cross-bill of the trustee, John J. Freeman, filed herein, and the answer of the defendant A. H. H. Dawson and the replications duly filed, and upon the orders and decrees heretofore entered, including the consent decree of June 13th, 1879, and on the proof now on file, including the entire record of the two judgments at law in this court on the law side, rendered against R. C. Daniel in favor of A. H. H. Dawson, and the fi. fas. issued on said judgments and the levies en-
309 dorsed thereon, all duly and regularly filed and read on the hearing of this cause; and it appears from said proofs and record that on the law side of this court the defendant herein, A. H. H. Dawson, as plaintiff, recovered two judgments against the said R. C. Daniel, as defendant in said suits, at the May term, 1878, and on the 6th day of June, 1878, one of the days of said May term, one of said judgments being for the sum of ($3,019.22) three thousand and nineteen dollars and twenty-two cents, and twenty-six dollars costs, and the other judgment being for ($2,610.69) two thousand six hundred and ten dollars and sixty-nine cents, and thirty-four and 80-100 dollars costs; and it further appearing that an execution was duly and legally issued on each of said judgments, and duly came to the hands of the marshal of this court, the 9th day of July, 1878, and were by him on that day duly levied, both of them, on the leasehold, fixtures, and improve-
310 ments in the levies described as the property of R. C. Daniel, and that said levies were never abandoned, but remained and were valid, legal and binding levies on said property of R. C. Daniel in those cases, and that said property was subject to said levies as the property of R. C. Daniel, and remained so until the sale thereof under the consent decree in this cause, entered on the 13th day of June, 1879, and that said judgments are each entitled to be paid from the proceeds of said sale, because of said judgments and levies, and the same is so ordered, it appearing by the agreement of counsel by consent given in the decree of June 13th, 1879.

It is therefore ordered, adjudged, and decreed that the original cross-bill and amended cross-bill of R. C. Daniel and others be dismissed at the costs of the complainants therein, and that the complainants in said original and amended cross-bills, R. C. Daniel, S. Higgins Craig, M. T. and E. E. Lowry, Samuel G. and Fannie L. Handley and John J. Freeman, their surety on the cost bonds, pay the costs of said original and amended cross-bills and all costs produced thereby. It is further ordered that the cross-bill of J. J. Freeman, trustee, be dismissed, and that said Freeman, as trustee and surety in the cost bond, pay all the costs of said cross-bill and the costs of this cause not hereinbefore adjudged and not already paid; under the decree of June 13th, 1879, J. J. Freeman received the $10,000.00 as therein directed, the court holds and decrees that the claim of S. Higgins Craig and Fannie L. Handley as set up in their cross-bill as satisfied and paid. It is therefore ordered that the costs of the two law cases of A. H. H. Dawson *vs.* R. C. Daniel, including the commissions of the marshal, be paid out of the funds in the registry of the court, and the funds in the hands of Freeman shall be paid as provided in the consent decree of June 13th, 1879, after paying the costs herein adjudged against him. Upon the application of Humes and Poston, attorneys and solicitors of A. H. H. Dawson, and it appearing that they have rendered valuable services to said Dawson in the prosecution of these causes, it is ordered and decreed by the court that a lien be and the same is hereby retained and declared in their favor upon the amount of the recoveries herein adjudged for their reasonable costs and fees in this behalf. It appearing to the court that the claim of the original complainants, S. B. Steers & Co., has been paid in full as directed by said decree of June 13th, 1879, and that all the costs of the cause down to the entry of said decree have been paid as therein directed, and the entire cause on the original and cross-pleadings having now been finally disposed of, the cause is ended, and the parties will go hence without day.

UNITED STATES OF AMERICA,
Western district of Tennessee.

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1880, at the United States court-house in the city of Memphis, in said district, on, to wit, the 9th day of Aug., A. D. 1880, in the following cause, to wit:

S. B. STEERS et als., plaintiff,
vs.
R. C. DANIEL et als., defendant. } No. 329.

The following order, granted at chambers August 5th, 1880, was ordered to be spread upon the minutes: J. J. Freeman, trustee and

cross-complainant in this cause, appeared this day in open court and prayed an appeal to the next term of the Supreme Court of the United States from the final decree herein, entered on the 28th day of July, 1880, and moved the court to fix the penalty of an
315 appeal bond to be given by him, to operate as a supersedeas of said decree, and thereupon the court fixed the penalty of such bond at fifteen hundred dollars. And the said Freeman then and there, in open court, presented an appeal bond in the penalty of fifteen hundred dollars, conditioned as the statute requires for a supersedeas bond, and executed by John J. Freeman, principal, and George Gantt, Josiah Patterson, C. W. Metcalf, and S. P. Walker, as sureties, and the court being satisfied of the solvency and sufficiency of said bond, approved and accepted the same, ordered it to be filed, and allowed the said appeal. And thereupon the court, upon motion of the defendant Freeman, ordered that the fund of six thousand two hundred and forty dollars, now in the hands of the clerk of this court, be invested, and the parties in inter-
316 est are allowed twenty days in which to agree upon the manner of investing the same, at the expiration of which time, if they shall not have agreed upon an investment, by a written stipulation filed with the clerk, the clerk will, without further order, invest said fund of six thousand two hundred and forty dollars in bonds of the United States. The investment that may be made by agreement of the parties is to be first approved by the court, or one of the judges thereof, at chambers. The counsel for Dawson, being now present, acknowledges service of citation on the appeal.

317 UNITED STATES OF AMERICA, *Western district of Tennessee.*

In the Circuit Court of the United States within and for the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1879, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 13th day of June, A. D. 1879, in the following cause, to wit:

S. B. STEERS et als., plaintiff,
No. 329.] *vs.* } Equity.
R. C. DANIELS et als., defendant.

This cause came on this day to be heard before the Hon. E. S. Hammond, judge, &c., on the original, amended, and supplemental, and further amended and supplemental bills of the complainants, the answers filed thereto by the defendants John M. Lea, S. Higgins Craig, M. T. Lowry and Eleanor E. Lowry, his wife, Samuel G. Handley and Fannie L. Handley, his wife, and A. H. H.
318 Dawson, upon the pro confesso heretofore taken as to the defendants R. C. Daniel, Edmonia P. Daniel, his wife, Thos.

H. Milburn, Samuel Parker, and Nicholas L. Rembert, J. Preston Young, W. Z. Mitchell, David M. Rodman, on said original and the amended and supplemental bills filed upon the answer and cross-bill of the defendant John M. Lea, and the answer of the complainants thereto, upon the cross-bill of R. C. Daniel, S. Higgins Craig, M. T. Lowry and Eleanor E. Lowry, his wife, Samuel G. Hundley and Fannie L. Hundley, his wife, and the answers of the complainants and likewise of the defendant A. H. H. Dawson thereto, and upon the replication, the various exhibits, depositions, and proofs on file; and it appearing to the court that process has been duly served upon or appearance duly made for the following defendants: R. C. Daniel,
Edmonia P. Daniel, his wife, Thos. H. Milburn, Samuel Par-
319 ker, Nicholas L. Rembert, J. Preston Young, W. Z. Mitchell,
W. H. Cherry, Charles Yager, David M. Rodman, John M. Lea, H. C. Warinner, trustee, and John J. Freeman, trustee, and that they have failed to appear and plead, answer, or demur to the complainants' further amended and supplemental bill when the time required by law and under the orders of this court, it is therefore ordered, adjudged, and decreed by this court as to the defendants so named the allegations of the said further amended and supplemental bill filed herein on the 15th February, 1879, be taken for confessed and set for hearing ex parte. And thereupon the said cause was further heard upon the pleadings, orders, exhibits, depositions, and proofs hereinbefore mentioned, and upon the pro confesso last herein mentioned; and it appearing to the court that the com-
plainants, S. B. Steers and E. L. Morse, by a contract
320 duly made with the defendant R C. Daniel, manufactured, built, and erected upon the leasehold estates hereinafter described a certain compress called the Morse improved cotton compress, or Morse-Tyler improved cotton compress, with its engines, boilers, machinery and appurtenances, and completed and finished the same according to said contract upon the 22 February, 1878, and it also appearing that they, the said complainants, filed their bill in this cause for the purpose of enforcing their mechanic's lien upon said property for a balance alleged to be due them thereon within less than one one year after the completion of said cotton compress, and by consent of parties, in open court, it also appearing that the balance due to the said complainants under their said contract for the
manufacture, building, and erection of said cotton compress is
321 evidenced by the promissory notes of the defendant R. C. Daniel, and is secured and supported by a valid, subsisting mechanic's lien under the laws of Tennessee upon the three-fourths interest of the defendants herein in the said cotton compress, its engines, boilers, machinery and appurtenances, (the other one-fourth interest being held by S. B. Steers, one of the complainants,) and upon the entire interest of the defendants in the leasehold estates hereinafter described, embracing the sheds and remaining improvements thereon; that said mechanic's lien is superior and prior to all other liens held by any of the other parties in this cause on said property,

and that the said complainants are entitled to enforce the said mechanic's lien for the payment of any of said balance due them on said property; and it further appearing by simple calculation that there still remains due to the complainants upon their con-
322 tract price for the manufacture, building and erection of said compress the sum of eight thousand two hundred and seventy-six and 90-100 dollars ($8,276.90) principal, and four hundred and seventy-one and 35-100 ($471.35) dollars interest, aggregating $8748.35, and that the leasehold estates hereinafter described, with the sheds and improvements thereon, and embracing the three-fourths interest of the defendants on the said cotton compress, its engines, boilers, machinery and appurtenances as aforesaid, have been duly attached to answer the demand and mechanic's lien of the complainants in this cause: It is therefore ordered, adjudged, and decreed by the court that the complainants, S. B. Steers and E. L. Morse, composing the firm of S. B. Steers & Co., do have and recover of the defendant R. C. Daniel the said sum of eight thou-
sand seven hundred and forty-eight and 25-100 dollars and
323 also the costs of this cause in this court and in the state court, from which it was removed.

The defendant, R. C. Daniel, declining and refusing in open court to pay said sum, and waiving any time or indulgence he might have in which to make payment, the court thereupon further orders, adjudges, and decrees that the complainants, S. B. Steers and E. L. Morse, have a valid and subsisting lien, superior to the liens of all other parties hereto, upon the right, title, and interest of the defendants in and to the following leasehold estates, more particularly described as follows, to wit: Lots Nos. five and six of Robinson's subdivision of original county lot four hundred and ninety-nine, each of said lots fronting fifty-nine and one-half feet, and running back southwardly between parallel lines one hundred and sixty feet, more or less, to the south side of the alley between Adams and Washington
324 streets, being the same property leased by W. Z. Mitchell to R. C. Daniel January 7, 1878, for the period of six years, said deed of lease being recorded in book 13, page 82, register's office; also a certain lot of ground, part of county lot 499, beginning at a point on the south side of Washington street 120 feet west of High street, running thence westwardly eighty feet, more or less, to the west line of John M. Lea's lot; thence southwardly, between parallel lines, to an alley 148½ feet distant; thence eastwardly eighty feet, more or less, to the east line of John M. Lea's lot; thence northwardly 148½ feet to the south side of Washington street, being the same property leased by John M. Lea on the 1st January, 1878, to R. C. Daniel for the period of six years; also a certain lot of ground situate in the rear of the last-named lot, beginning at a point on the north line one hundred feet west of the west line of High street; thence
325 running westwardly on the lines of Adams street one hundred feet, more or less; thence northwardly, on a line parallel to High street, 160 feet, more or less; thence eastwardly, on a

line parallel to Adams street, 100 feet, more or less; thence southwardly 160 feet to the beginning, being the same property leased by John M. Lea to R. C. Daniel Jan'y 1, 1878, for six years; and all the buildings and improvements situate and being on the aforesaid described lots; also the three-fourths of the certain improved Morse-Tyler cotton compress, with its engines, boilers, machinery, and appurtenances thereto belonging, located and being on the aforesaid described lots. It is in part the same property heretofore conveyed to H. C. Warriner in trust to secure certain liabilities due to S. B. Steers & Co., and which liabilities are particularly set forth in said conveyance, and this is
326 made subject to that conveyance so far as the part of the property embraced in that conveyance to said H. C. Warriner, trustee, is concerned, together with the sheds and improvements thereon, embracing the three-fourths interest of the defendant or any of them in said Morse improved cotton compress, its engines, boilers, machinery, and appurtenances, said S. B. Steers being the owner of the remaining one-fourth interest therein. To satisfy which lien and subject said property to the aforesaid decree, the said complainants are entitled to an immediate sale of said property, and the court so orders, adjudges, and decrees. And thereupon, it appearing to the court by consent of the parties hereto, that John J. Freeman, one of the defendants, as trustee, has negotiated a sale of said property to the Union Cotton Compress Association and Mammoth Cot-
327 ton Compress Company, by the terms of which sale they assume and agree to pay the indebtedness hereinbefore ascertained to be due to complainants S. B. Steers and E. L. Morse, and for which they have a decree as aforesaid against said R. C. Daniel, and which is declared a superior lien on said property, and also the further sum of sixteen thousand dollars, of which eight thousand are to be paid in cash and remainder in four equal instalments due in four, six, eight, and ten months from the entry of this decree, to wit, June 13th, 1879, to be endorsed by the negotiable promissory notes of the said purchasers, bearing interest at the rate of six per cent. per annum from the 13th of June, 1879. And the court being satisfied that said sale is for a full and fair price, and for the manifest interest of all the parties concerned, whether they claim to be
328 interested as a owner, or by way of resulting trust, lien creditors, or otherwise, and with the consent and concurrence of all the said parties in interest, does therefore ratify and confirm said sale, and upon compliance therewith by the purchasers the court will divest all right, title, and interest of all the parties in this cause in and to said leasehold, sheds, and improvements, embracing the the said three-fourths interest in said cotton compress, its engines, boilers, machinery, and appurtenances (excluding and excepting the fourth interest of S. B. Steers as aforesaid,) so sold by the said Freeman, and will vest the same in the said purchasers, their assigns and successors, and upon compliance with the terms of purchase, said property so sold will be immediately delivered to the said purchasers,

who shall have and take by virtue of their purchase (all par-
329 ties in interest consenting) the absolute title to said property,
without any right or equity of redemption or repurchase. It
is further ordered, adjudged, and decreed that the following disposi-
tion be made of the purchase-money, all parties in interest consent-
ing:

1. The said Freeman, as trustee, shall out of the same pay the accrued rent and taxes due on said property to date.

2. The said Freeman, as such trustee, shall pay out of said proceeds such sum as may be necessary to satisfy and extinguish a certain mechanics' lien claim in favor of M. Brasman et als. *v.* R. C. Daniel et als., suit for which is pending in the state Court of Chancery, No. 3212 R. D., and the costs of said suit.

3. Said Freeman, as such trustee, will pay out of said proceeds all the costs and expenses incurred in this cause, in the state court and
in this court, including the entry of this decree, the costs of
330 the suit of A. H. H. Dawson to be hereafter disposed of by
the court, but they are in no event to count upon the said compress and leaseholds or upon the complainants, S. B. Steers & Co.

4. The said Freeman, as trustee, will deposit with the clerk of this court, to be placed by said clerk in the registry of the court, three of the notes of the said purchasers for two thousand dollars each, of the deferred purchase money, falling due in six, eight, and ten months from June 13th, 1879, and payment of which are to be guaranteed or secured by endorsement, to the satisfaction of the complainants in the cross-bills of May 15th, 1879, and of June 10, 1879, on the one side, and of the defendant A. H. H. Dawson on the other, which said deposit of six thousand dollars is to provide a
fund for the conflicting claims of said complainants in said
331 cross-bills on the one side and of the said A. H. H. Dawson
on the other, and which as to them shall stand in the place and stead of and occupy precisely the same attitude and relation to said parties, and their respective claims touching the same, as the property itself did, and which shall abide the result of the litigation between said parties, or be disposed of in such manner as they may determine by compromise and settlement of the litigation between them if a compromise and settlement shall be effected; and in the event of a compromise the fund, without awaiting a formal order or decree, will be paid out in pursuance of the compromise upon the written evidence of the terms of the same, attested by the respective solicitors of the parties and as the terms of such compromise may
order; and the court not being sufficiently advised as to the
332 merits of the controversy raised in the cross-bills filed on the
15th of May, 1879, and June 10th, 1879, between the complainants therein and the defendant A. H. H. Dawson, upon the application and motion of said parties the further hearing thereof is postponed to a subsequent day of the term, with leave to said parties, complainant and defendant therein, to take such further proof as they may desire, but so as not to delay the hearing. And the

complainants in the cross-bills of May 15th, 1879, come and dismiss the same as to defendants Steers & Morse at their own cost, but retain it as to the other defendants. Said Freeman, as trustee, after paying out of said fund the several sums herein ordered to be paid by him, and making said deposit with the clerk as ordered, will apply the residue pro rata to the claims of the complainants in the cross-bill of May 15th, 1879, and
333 whatever portion, if any, may come to his hands of the said deposit of six thousand dollars will be applied by him to the claims of the complainants in the cross-bills of May 15th, 1879, and June 10th, 1879, according to their respective equities and priorities, and the original bill is retained so far as it may be necessary to support the litigated questions raised by the cross-bills between the complainants therein and said A. H. H. Dawson, and no priority or lien or other question adjudged in this decree is to affect the rights, claims and equities of the said complainants in said cross-bills on one side, or the said A. H. H. Dawson on the other, but the same are to stand relatively to said fund as the representative of the property, just as if this decree had not been made. Upon payment of the said sum of eight thousand dollars in cash, and the execution and
334 delivery of the four notes for two thousand dollars each, as hereinbefore specified, the court will by further decree vest the purchasers, the Union Cotton Compress Association and the Mammoth Cotton Compress Company, with the absolute title to the three-fourth (¾) interest in the cotton compress, its boilers, engines, machinery and appurtenances, and to the entire interest in the leaseholds and improvements aforesaid, freed and discharged of all claims for costs and charges of any character whatever either in this cause or the suit of A. H. H. Dawson, and of all right, title and interest in or claims against the same on the part of any party to this cause, excepting only the indebtedness due to and hereinbefore adjudged in favor of complainants, S. B. Steers & Co., subject to which said purchasers buy. The consent herein given to Freeman's retaining and paying out the purchase money
335 over the $6,000.00 deposited is not to affect Dawson's right to have the same applied to the payment of the interest of the persons claiming as beneficiaries under the alleged resulting trusts. And if the court should finally decree in favor of said persons' right as beneficiaries under a resulting trust as claimed, then it is hereby agreed that the entire sum paid to said Freeman, except the amount herein decreed to Steers and Morse and the reserved $6,000.00, shall be for all the purposes of this litigation a payment to the beneficiaries under the resulting trusts, and shall be so treated in taking the account if one should be ordered. To whomsoever the $6,000.00 shall be decreed, it is hereby agreed that this successful party may take the notes and not be required to wait to their
336 maturity and collection, and if this account should be necessary the common expenses properly chargeable to the whole fund prior to the claims of Dawson shall be borne by the whole fund.

337 Supreme Court of the United States.

Know all men by these presents, that we, John J. Freeman, trustee, principal, and C. W. Metcalf, S. P. Walker, Josiah Patterson, and George Gantt, sureties, are held and firmly bound unto A. H. H. Dawson in the sum of fifteen hundred dollars, to be paid to the said Dawson, his executors or administrators; to which payment well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals; dated this 5 day of August, 1880.

Whereas, the above-named John J. Freeman hath prosecuted a writ of appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the Circuit Court of the United States for the western district of Tennessee:

Now, therefore, the consideration of this obligation is such, that if the above-named John J. Freeman shall prosecute his said writ of appeal to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

J. J. FREEMAN, [SEAL.]
By GEO. GANTT,
Att'y in fact.
JOSIAH PATTERSON. [SEAL.]
GEO. GANTT. [SEAL.]
C. W. METCALF. [SEAL.]
S. P. WALKER. [SEAL.]

Acknowledged before me this 5 day of August, 1880, and approved.

E. S. HAMMOND, *J.*

338 (Endorsed:) No. 329. Circuit Court of the United States, western district of Tennessee. S. B. Steers et al. *vs.* R. C. Daniel et al. Appeal bond to United States Supreme Court. Filed the 5th day of Aug., A. D. 1880. Bell W. Etheridge, clerk. W. B. Weisiger, d. c.

339 THE UNITED STATES OF AMERICA,
Sixth circuit and district of west Tennessee.

I, Bell W. Etheridge, clerk of the Circuit Court of the United States for said district of west Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect, and correct copy of such parts of the original record and proceedings as agreed upon by counsel to be copied in said court, as the same now appears of record and upon the files in my office in the following cause, to wit:

S. B. STEERS et als.
vs.
R. C. DANIEL et als. } No. 329.

In testimony whereof, I have hereunto set my name and affixed the seal of said court at office in the city of Memphis this 16th day of November, A. D. 1880, and of the Independence of the United States the 105th year.

[SEAL.]

BELL W. ETHERIDGE, *Clerk.*
W. B. WEISIGER, *D. C.*

(Endorsed on cover:) W. Tennessee, C. C. U. S. No. 202. John J. Freeman, trustee, appellant, *vs.* A. H. H. Dawson. Filed 20th November, 1880. 339 pages.

110-264

SUPREME COURT OF THE UNITED STATES.

NO. 202.

JOHN J. FREEMAN, TRUSTEE.

Appellant,

VS.

A. H. H. DAWSON,

Appellee.

BRIEF AND ARGUMENT FOR APPELLANT.

S. P. WALKER,
FOR APPELLANT.

MEMPHIS, TENN.:
Jones, Huhn & Co., Printers, Binders, &c., 12 Jefferson Street.
1884.

SUPREME COURT OF THE UNITED STATES—No. 202.

JOHN J. FREEMAN, TRUSTEE,
APPELLANT,

vs.

A. H. H. DAWSON,
APPELLEE.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT.

August 7, 1878, S. B. Steers & Co. filed their original bill in the Chancery Court of Shelby County, against R. C. Daniel, to enforce a mechanic's lien upon the leasehold of Daniel in certain realty, and upon the three-fourths interest of Daniel (the other one-fourth being owned by Steers) in the cotton compress machinery, improvements and appurtenances, which the complainants had erected on said leasehold premises, under a contract made by them with Daniel.

That bill was filed under sections 1981 *et seq.* of the Code of Tennessee, whereby a specific lien is given to the contractor in such case upon the ground and buildings and improvements erected thereon.

An attachment was accordingly issued and levied upon said properties.

All of this more fully appears in Transcript, page 1; Warriner's deposition, page 33, and in the decree June 13, 1879, page 104.

The ground had been leased by Daniel from Lea & Mitchell for a term of six years, at a stipulated semi-annual rental, with

right of forfeiture for non-payment of rent, and the right was given to Daniel to remove the machinery and improvements that might be erected by him on the leased premises.

These two leases are copied in full in the Transcript, at pages 76 and 79.

June 6, 1878, Dawson recovered two judgments in the Circuit Court of the United States against Daniel, one for $3019.22, and the other for $2610.69.

Trans. 21.

June 13, 1878, Daniel moved to vacate both of said judgments, and the following order was entered on that day in each cause:

"In this cause, the application of defendant to vacate the judgment rendered herein, at the present term of this court, is *continued until the next term of the court*, without prejudice to either party."

Trans. 22.

July 5, 1878, while said motions were still pending, and said order was still in force, the clerk issued executions to the marshal upon both of said judgments.

July 9, 1878, as appears from the marshal's endorsements thereon, he levied said executions "upon the leasehold interest "of R. C. Daniel in and to lots 5 and 6, and the adjoining lots "thereto, being parts of Robins' subdivision of country lot "499, in the city of Memphis, Shelby County, Tennessee; also "the *interest* of R. C. Daniel in and to the Morse Improved "Tyler Cotton Compress, with all the appurtenances and be-"longings, and located in and upon said lots—all as the pro-"perty of R. C. Daniel. Description of levy hereunto attached "and made part hereof." * * *

Trans. 27.

In his "description of the levy," the marshal describes the compress, etc., as "chattel property in, about and upon the foregoing described lots and parcels of ground."

Trans. 26.

August 5, 1878, Judge Baxter addressed a note to the clerk, as follows:

"KNOXVILLE, TENN., Aug. 5, 1878.

"MY DEAR SIR—I have been furnished by Messrs. Gantt & Patterson, attorneys for Mr. R. C. Daniel, with certified copies of the record in the suits of A. H. H. Dawson v. Daniel, pending in your court. From this, as I construe it, judgments by default were rendered at the last term, and then an application made to set aside said judgments and permit defendant to plead, which application was continued to next term of the court. This leaves these cases pending and undetermined. Yet Messrs. Gantt & Patterson, for their client, represent that executions have been issued and levied on Daniel's property. If this is so, the executions are without authority, and ought to be called in as imprudently issued. There is no final judgment on which they can rest. My suggestion is that you issue a paper to the marshal, reciting the fact that executions were issued without authority, and request him to return the same unexecuted.

"I am, very truly, etc.,

"JOHN BAXTER.

"*Bell W. Etheridge, Esq.,*
"*U. S. Circuit Clerk, Memphis, Tenn.*"

Trans. 50.

And the clerk thereupon addressed to the marshal a note, as follows:

"CIRCUIT COURT OF THE UNITED STATES,
Western District of Tennessee.

A. H. H. Dawson,
vs.
R. C. Daniel. } No. 2480.

A. H. H. Dawson,
vs.
R. C. Daniel. } No. 2481.

"*To the U. S. Marshal, Western District of Tennessee:*

"In accordance with the instructions of Judge Baxter, communicated by letter, a copy of which is hereto attached, I notify you that the executions issued in the two above named cases

were issued without authority, and request you to return the same unexecuted. You will, therefore, act accordingly.

"Witness, my signature and the seal of said court, this the seventh day of August, 1878.

SEAL.

"BELL W. ETHERIDGE, Clerk.

"H. E. ANDREWS, D. C."

Trans. 50.

As already stated, Steers & Co. filed their bill Aug. 7, 1878, against Daniel to enforce their lien on the leasehold and on a three-fourth interest in the compress, machinery, etc., upon which an attachment issued.

The marshal holding the executions in Dawson v. Daniel, made his return thereon as follows:

"And on the 17th day of August, 1878, (evidently a misprision for August 7th) in obedience to an order of court, issued by Hon. John Baxter, I return this writ without further proceedings."

Trans. 27.

The coroner thereupon, under the writ of attachment in the Steers case, made his levy and took possession after the marshal had made said return.

November 22, 1878, Daniel executed a trust deed to John J. Freeman, trustee, upon "all my right, title and interest in and to the certain leasehold" (describing the land) "also the *three-fourths* of the certain improved Morse-Tyler Cotton Compress, with its engines, boilers, machinery and appurtenances thereto belonging, located and being on the aforesaid described lots," * * * to secure sundry debts and accommodation endorsements, in all amounting to $18,370.00. This trust deed was duly acknowledged and filed for registration Nov. 23, 1878.

Trans. 5.

January 6, 1879, in the two cases of Dawson v. Daniel, at the November term, 1878, and after the withdrawal by the marshal of his levies, and after the levy of the attachment in Steers v. Daniel, and after the registration of the trust deed to

Freeman, an order was entered overruling Daniel's motion to vacate the judgments.

Trans. 28.

And on February 8, 1879, the plaintiff moved for a writ of *venditioni exponas*, and the same was issued by the clerk, February 10, 1879.

Trans. 29.

These writs were subsequently returned by the marshal, reciting, among other things, that on the 10th day of February, 1879, he went upon the premises and found "the cotton compress situate thereon being operated by and under the management, direction and control of Charles Yerger, who claimed to be in possession of said property under and by virtue of an order of the Chancery Court of Shelby County, which placed the property in the possession and custody of R. C. Daniel for and on behalf of the sheriff and coroner of said county, * * and that on the 12th day of February, 1879, Messrs. Humes & Poston, for plaintiff herein, directed that all proceedings hereunder be suspended until further orders in the premises."

Trans. 30.

February 13, 1879, Steers & Co. filed their amended and supplemental bill, making Dawson, Freeman, trustee, and the beneficiaries, defendants thereto, and removed the cause to the United States Circuit Court.

After answers, and cross-bills filed by Freeman, trustee, and others, beneficiaries under the trust deed asserting as against Dawson a superior right and lien, and answers of Dawson, that cause came to a hearing June 13, 1879—on which day a final decree, so far as concerned Steers & Co., was rendered, establishing Steers' ownership of one-fourth of said compress, machinery, &c., and the superiority of their lien over all others upon the entire leasehold estate, and upon *three-fourths* of the compress, machinery, etc., for $8748.35, and decreeing an immediate sale of said three-fourths and of said entire leasehold for the payment of the same. The decree then proceeded to recite that, "by consent" of parties, Freeman, trustee, had negotiated

a sale thereof to the Union and Mammoth Cotton Compress Companies, by the terms whereof said Companies agree to assume and pay the debt due to Steers & Co., and also the further sum of $16,000—of which, $8000 is to be paid in cash, and four notes of $2000 each to be executed for the balance. The decree then proceeded further, " with the consent and concurrence of all parties," to ratify the sale, and to direct a vestiture of title in the purchasers, to the leasehold and to three-fourths of the compress, machinery, &c., upon compliance with the terms of sale. Compliance therewith was made, and the decree then proceeded to direct Freeman, trustee, to dispose of the funds as follows: 1st—To pay the ground-rent and taxes due on the leasehold. 2d—To satisfy a mechanic's lien in favor of Brosner. 3d—To pay the costs of the cause in the State court and in this court. 4th—" The said Freeman, as trustee, will deposit with the clerk of this court, to be placed by said clerk in the registry of the court, three of the notes of the said purchasers for two thousand dollars each, of the deferred purchase money, falling due in six, eight and ten months from June 13, 1879, and payment of which are to be guaranteed or secured by endorsement, to the satisfaction of the complainants in the cross-bills of May 15, 1879, and of June 10, 1879, on the one side, and of the defendant, A. H. H. Dawson, on the other; which said deposit of six thousand dollars is to provide a fund for the conflicting claims of said complainants in said cross-bills, on the one side, and of said A. H. H. Dawson on the other, and which, as to them, shall stand in the place and stead of, and occupy precisely the same attitude and relation to said parties, and their respective claims touching the same, as the property itself did."

This disposed of the case as to Steers & Co., and only left the contest narrowed down to the right to the $6000.00 fund on hand, as between Freeman, trustee, and Dawson.

July 28, 1880, that branch of the case came to a final hearing, resulting in a decree in favor of Dawson, which, after reciting the rendition of his judgments against Daniel, proceeded as follows:

"And it further appearing that an execution was duly and legally issued on each of said judgments, and duly came to the hands of the marshal of this court, the 9th day of July, 1878, and were by him, on that day, duly levied, both of them, on the leasehold, fixtures and improvements, in the levies described as the property of R. C. Daniel; and that said levies were never abandoned, but remained, and were valid, legal and binding levies on said property of R. C. Daniel in those cases; and that said property was subject to said levies as the property of R. C. Daniel, and remained so until the sale thereof under the consent decree in this cause, entered on the 13th day of June, 1879; and that said judgments are each entitled to be paid from the proceeds of said sale, because of said judgments and levies, and the same is so ordered; * * and the funds in the hands of Freeman shall be paid as provided in the consent decree of June 13, 1879, after paying the costs herein adjudged against him."

ASSIGNMENT OF ERRORS.

1. The decree erroneously declared the execution in Dawson v. Daniel to have been duly and legally issued and levied on the leasehold, and the fixtures and improvements erected thereon, and "that they were never abandoned, but remained, and were valid and binding levies on said property; * * * and so remained until the sale thereof under the consent decree of June 13, 1878."

2. If not erroneous as to the leasehold, it was erroneous as to the "fixtures and improvements," and hence it was error to have declared Dawson entitled to be satisfied out of the entire $6000.00, proceeds of the sale, in bulk, of *both* the leasehold and fixtures.

3. If Dawson was entitled at all, it was only by virtue of some levy or lien on the *leasehold*, and inasmuch as he has not shown affirmatively how much the *leasehold* produced, he was not entitled to a decree for any amount.

4. The decree should have declared Freeman, trustee, entitled to the $6000.00, under the trust deed executed to him and registered November 23, 1878, at which time there was no subsisting levy or lien on either the leasehold or the machinery, etc., which were conveyed to him.

BRIEF.

I.

A leasehold is a chattel.

Freeman on Ex., Sec. 119.
Taylor's L. & T., Sec. 176.
1 Black. Com., * 383.
2 Kent's Com., p. 419.
Thomas v. Blackmore, 5 Yer. 113.

It is so treated by the Tennessee statute.

Code, Sec. 2002.

Leaseholds, unless some statute directs otherwise, are levied on and sold as personalty.

Freeman on Ex., Sec. 119.
Taylor's L. & T., Sec. 176.
Barr v. Doe, 6 Black (Ind.) 334.
Williams v. Downing, 18 Pa. St.
Lemar v. Miles, 4 Watts & S. 255.
Buhl v. Kenyon, 11 Mich. 249.
Shelton v. Codman, 3 Cush. 318.

II.

Trade fixtures, removable by the tenant, are chattels, and may be sold under execution against the tenant, and be removed by the purchaser.

Ewell on Fixtures, 357.
Tyler on Fixtures, 164–240.
Crocker on Sheriffs, 448.

Freeman on Ex. 8114

Heffner v. Lewis, 73 Pa. St. 302.
Lamphere v. Lowe, 3 Neb. 131.
Pillow v. Love, 5 Hay. (Tenn.) 109.
Marshall v. Loyd, 2 M. & W. 450.
Cresson v. Stout, 17 Johns 116.
Hay v. Bruner, 61 Pa. St. 87.
O'Donnell v. Hitchcock, 118 Mass. 401.

The machinery and improvements were removable by the lessee, and, therefore, personalty.

a. By the express terms of the lease.
Ewell on Fixtures, 358.
Tyler on Fixtures, 24b.
Hay v. Bruner, 61 Pa. St. 67-91.

b. Because they were trade fixtures.
Van Ness v. Peacock, 2 Peters 137.
Pillow v. Love, 5 Hay. (Tenn.) 109.
McDavid v. Wood, 5 Heisk. 95.
Cresson v. Stout, 17 Johns 116.
Cheatham v. Blakemore, 1 Cooper Tenn. Chy. 579.
Saunders v. Stalling, 5 Heisk. 65.

III.

Said leasehold and fixtures being chattels, it follows that in order to make and continue a valid levy thereon, the officer must take and keep actual dominion, control or possession thereof.

Freeman on Ex., Secs. 260–263.
Bradley v. Cain, 5 Cold. 223.
Miller v. O'Bannon, 4 Lea 404.
Evans v. Higdon, 1 Bax. 246.
Bryant v. Osgood, 52 N. H. 182-9.
Henneway v. Wheeler, 14 Pick. 408.

IV.

It conclusively appears by the record that prior to the execution of the trust deed to Freeman, the marshal had not only

abandoned all possession and control of the property levied upon, but *intended to and did abandon the levy itself.*

Berry v. Smith, 3 Wash. C. C. 60.
Smith v. Erwin, 77 N. Y. 466.
—— v. Ebersole, 87 Pa. St. 109.
Ala. Gold Life Ins. Co. v. McCreary, 65 Ala. 127.
Shelman v. Chaffee, 5 Col. 247.

ARGUMENT.

I.

The authorities cited in the brief show that leaseholds, by the common law, have always been considered chattels. By the Tennessee statutes no change has been made in respect to their character as such. The Tennessee Code, Sec. 51, defines personalty as including slaves, moneys, goods, *chattels*—things in action and evidences of debt.

Bouvier, under the definition of "chattels," says the term includes "all kinds of property except the freehold,or things which are parcel thereof. * * Chattels real are such as are issuing out of some real estate, as a lease of lands or term of years which pass, like personalty, to the executor."

Again, as more conclusively showing that leaseholds are treated by the Tennessee statutes as personalty, title II., chapter 1, is entitled, "Of Personalty." No other subject is treated of in that chapter except personalty, and among other things, provision is made for registering mortgages of personalty, expressly including leaseholds.

Sec. 2002 *et seq.*

That leaseholds are regarded as personalty, is further apparent from the fact that the next chapter is devoted exclusively to real property, and is entitled, "Of Real Property." In this chapter provisions are made as to the mode of conveying real estate; form of deeds; what words unnecessary to convey a fee; how "real estate" should be sold under execution, and how

redeemed—allowing two years redemption under execution sales.

As further indicating that by the Tennessee statutes leaseholds were deemed personalty, it became necessary to legislate, in order to extend the homestead right to leaseholds, which was not done until 1866 (Code 2113,) and the right was even then limited to leaseholds of not less than two nor more than fifteen years.

It is true that in Choate v. Tighe (10 Heisk. 621,) the court, through Burton, special Judge, decided in favor of a vendor's lien upon a leasehold. But, as will be seen, the opinion is based mainly upon general principles of equity—the court saying that it is "unable to see why a party who has gotten the leasehold of another is not as much bound in conscience to pay for it, as if it were a freehold." He further adds: "Other important incidents belonging to real property attach to a leasehold estate—among which is, that it is embraced by *legal construction* under our statutes, providing for redemption of land sold under execution."

This was a *dictum* announced without argument and without citation of authority, and, as we submit, without due consideration.

In Buhl v. Kenyon (11 Mich. 250,) under a statute declaring that "real estate shall be construed to include lands, tenaments, and all rights thereto or *interest* therein"—which is the identical language of the Tennessee Code, Sec. 51—the court has determined the question to the very contrary of the *dictum* in 10 Heisk., in the following language: "That statute," says the court, "does not change a leasehold from a chattel into realty, so as to authorize a levy and sale thereof as *realty*. * * * Such interests have always been sold as personalty on common law executions, and it would require plain language to deduce an interest to make it disposable otherwise. But apart from the fact that they were so liable when lands were not, the statutory provisions governing real estate sales are not compatible with the idea that these can be included within them. There are multitudes of leases for short periods where a sale would be entirely nullified by a fifteen months period for redemption."

Nor does Kelly v. Schultz (12 Heisk. 218) touch the question, in the phase of it now in hand.

That case simply held under Sec. 51, in connection with Sec. 2481, exempting from the husband's debts his "interest in the wife's lands," that the leasehold of the wife is exempt. For *that purpose*, it might, by force of the words, "*interest in* the wife's land," have well been held to have been realty; and yet, for the purposes of a sale of the *husband's* leasehold, it might just as well, for the reasons before stated, be held to be personalty, and liable to execution as *such*, in the absence of any positive statute changing the well settled rule of common law.

II.

The fixtures, machinery, etc., erected on the leasehold, were movable, and subject to sale under execution as personalty.

Authorities cited *supra*.

By the express terms of the lease, it was provided that the lessee should have the right to remove them. This made them personalty, and subject to execution as personalty.

Authorities cited *supra*.

Aside, however, from the terms of the lease, the fixtures put upon the leasehold were *trade fixtures*, and hence removable.

Authorities cited *supra*.

And this is so, regardless of their size, material, or how affixed.

In Van Ness v. Pacard (2 Peters 137,) after reviewing all the authorities, this court, at page 146, says: "It has been suggested at the bar that this exception in favor of trade has never been applied to cases like that before the court, where a large house had been built and used in part as a family residence. But the question whether removable or not, does not depend upon the form or size of the building—whether it has a brick foundation or not, or is one or two stories high, or has a brick chimney or not. *The sole question is whether it is designed for purposes of trade or not.* A tenant may erect a large as well

as a small messuage, or a soap boilery of one or two stories high, and on whatever foundation he may choose."

This doctrine is as firmly established in Tennessee as elsewhere.

In Pillow v. Love (5 Hay 109,) the court declared that a still set upon the lands of a lessor by the lessee, *could be seized under fi. fa. by the sheriff as the property of the lessee, and sold as his.*

In Chatham v. Plinke (1 Cooper Chy., Tenn., 576,) the learned Chancellor, now of the Supreme Court, under a case giving the lessee the right to remove buildings (residence houses) erected by him during the term, *held* that the mortgagee of the lessee, as against the lessor, was entitled, after the expiration of the term, to subject the improvements to sale as chattels.

In Saunders v. Shatling, 5 Heisk., 66, and in McDavid v. Wood, 5 Heisk., 95, that trade fixtures put upon realty is personalty, is set at rest in Tennessee. In the former, machinery and fixtures similar to those in hand, were declared personalty and ordered to be sold, and were sold separately from the freehold, and before confirmation of sale by the court, they were destroyed by fire. The purchasers for that reason asked to be relieved of their purchase. The court held: 1st—The machinery, etc., were personalty and unlike realty, the sale was complete without confirmation and the loss must fall on the purchaser; 2d—That being personalty, though attached to the realty, the heirs were not necessary parties to the proceeding.

In McDavid v. Wood, the court held that even as between the executor and heir, the purpose for which the fixtures were annexed may be looked to, and if "not made with the view of a permanent advantage to the land, but for the purpose of trade or manufacturing, the erection will be regarded as a chattel."

Burr v. Graves (4 Lea 552,) is in favor of, instead of against the propositions insisted on by us.

1. It maintains the common law doctrine that a *paper levy*

on a leasehold and fixtures is insufficient, and that they must be levied on as personalty.

2. But that under a bill filed to enforce the mechanic's lien, it is not necessary that such a levy be made; that the lien is given by statute, and a levy is a mere form, unnecessary for the creation or maintenance of a lien, as in the case of a mere judgment creditor pursuing a levy under execution.

3. And inasmuch as the statute expressly gives the mechanic a lien "on the buildings and improvements," as well as on the land upon which they are built, the court held that so long as they remained attached to the soil, the lien applied to them as well as to the ground.

We have no such statute in Tennessee in favor of a judgment lien. The lien in favor of a judgment creditor is given upon the debtor's land (Code, Sec. 2980,) and not as in the case of a mechanic's lien upon "the building, fixtures and improvements, as well as upon the land."

Code, Sec. 2982.

And in the case of a judgment, the issuance of an *execution, levy and sale,* are necessary to the preservation and enforcement of the lien.

Code, Sec. 2982.

This is not so as to a mechanic's lien, for by statute, as we have seen, and by the construction thereof, as held in Burr v. Graves (4 Lea *supra,*) no levy is necessary, either to create, preserve or enforce the lien expressly given by statute on the improvements as well as on the land.

If we have shown that the leasehold, and the machinery, etc., were each personalty, and to be levied on as such, we have only to refer to the authorities cited in the brief to show that in order to make and *continue* a valid levy thereon, the officer must take and *keep* dominion, control and possession thereof.

We do not insist that in all cases he must take and keep actual manual possession, but that he must assert such dominion, control or possession, as, if he had no execution, his act would

be an actual or constructive tresspass. He must take possession either actually or do something which amounts to the same thing, and his possession or control must be such, that anyone interferring therewith would be a tresspasser.

Authorities cited in brief.

III.

The question, then, finally arises: Had the marshal abandoned his levy when the trust deed to Freeman was made?

Upon that proposition, we submit that it is established by the testimony that the levies made by the marshal on the two executions in favor of Dawson were abandoned prior to the execution of the trust deed to Freeman.

That the marshal had intentionally abandoned possession, dominion and control of the property, does not admit of controversy. He himself distinctly so testifies.

Trans. 45–46, answers 20 to 24 inclusive.

If it be true, therefore, as we have undertaken to establish, that the property in question was personalty, and that possession, taken and continued, was essential to the maintainance of a valid levy thereon, an abandonment of the possession would necessarily work an abandonment of the levies. The intent of the marshal not to abondon the levies (if such intent existed,) would, of course, be futile, if continued possession was essential, and if that possession was intentionally abandoned.

But we go a step further, and submit that the weight of testimony establishes an *intent* on the part of the marshal to abandon the levies themselves.

The levies were made by the marshal, and possession taken of the property levied upon the 9th of July, 1878. On the 5th of August, 1878. Hon. John Baxter, Circuit Judge, addressed a letter to the clerk, in which he expressed the opinion that the executions "are without authority, and ought to be called in as imprudently issued," (Trans. 50.) On the 7th day of August, 1878, the clerk notified the marshal that "the executions were

issed without authority," and requested him "to return the same *unexecuted*,"—the notice being accompanied by a copy of Judge Baxter's letter. (Trans. 50–51.) On the 8th of August, 1878, the marshal abandoned possession of the property, and on the 17th of August, 1878, he made return of the executions to the effect that "in obedience to an order of court, issued by "Hon. John Baxter, I return this writ *without further proceed-* "*ings*," (Trans, 27–33.) The letter of Judge Baxter, and the notice issued by the clerk in consequence thereof, constitute the "order of court" referred to in the return. The marshal testifies that he regarded the notice issued by the clerk, under the seal of the court, and accompanied by a copy of the letter, as an order of court, and that he intended to treat and obey it as such.

Dep. of marshal, Ans. to X Intgs. 1 to 3, pp. 41-42, Trans.

A few days after the levies made by the marshal, on the 9th of July, 1878, the State Court of Chancery, in the case of Steers & Co. v. Daniel, issued a writ of attachment against the same property levied upon by the marshal. H. C. Warrinner was the attorney for the complainants in that suit; and knowing that the marshal had levied and taken possession under the executions in favor of Dawson, he went to him, stated that he had the attachment from the State Court, that that court had, in ordering the attachment, expressly directed the sheriff not to interfere with the possession of the United States Marshal, and that he would cause the attachment to be levied whenever that possession was removed. On the 8th of August, 1878, Warrinner again saw the marshal (who had in the meantime received the clerk's notice, accompanied by Judge Baxter's letter, recalling the executions in favor of Dawson,) and the marshal then said to him: "I have removed my watchman—you can take the property, and do what you please with it."

Warrinner's Dep., Trans. 36–37, Ans. 1 to 4.

The marshal testifies that he "had no recollection of using any such language," but does not positively deny it.

Trans. 40, Ans. 2.

He further testifies than in notifying Warrinner of his with-

drawal from the possession, he had the distinct purpose to permit him to levy the writ of attachment from the State Court.

Trans. 45–46, Ans. 21 to 24.

Daniel testifies that about August 9th or 10th he had an interview with Williamson, and that W. stated that he had no further charge or control of the property; that he had given it up, and had abandoned his levy; * * that he had nothing more to do with the property, and had given up his levy.

Trans. 73, Ans. 13.

And, as throwing light upon what the marshal must have regarded as the effect of abandoning possession of the property levied upon, we find that he himself believed it to be and treated it as personalty, because: 1st—He took actual possession in making his levy: 2d—In endorsing his levy on the writ, he describes the compress as "*chattel property* in, about and upon the foregoing described lots and parcels of land, consisting of a Morse-Tyler Improved Cotton Compress, with engines, boilers machinery, frame sheds, etc., with all appurtenances thereto belonging."

Trans. 26–32.

Besides, therefore, the fact of the abandonment of possession by the marshal (which, without regard to any question of intent, necessarily worked an abandonment of a levy on personalty,) we have, as circumstances evidencing an abandonment of the levies: 1st—That the property levied upon was abandoned in obedience to an order of court (for so the letter of Judge Baxter and notice issued by the clerk were regarded and treated by the marshal,) recalling the executions, as issued improvidently and without authority; and, 2d—That the marshal intended to permit the levy, by the sheriff, of another writ, in hostility to the rights of Dawson. The marshal not only abandoned the possession, but the property itself, intending that it should be taken in execution by another officer, in right of another person. Conceding for the argument, that the entire property levied upon was real estate, in the strictest sense, we can conceive no more conclusive evidence of an intent to aban-

don the levies than is to be found in the fact that the officer abandoned the property levied upon, and consented to the levy of another and competing writ.

In conclusion we submit that at most, the leasehold interest of Daniel in the lands levied on may be considered as real estate, and subject to a pen-and-ink levy, but that the cotton compress machinery must be held to be personalty.

Freeman certainly had a mortgage lien on the whole—both leasehold and machinery—from the date of the registration of the trust deed to him—November 23, 1878. The original fund in court, of which the $6000.00 remaining to be disposed of is part, was produced by the sale of the whole, in bulk, under the consent decree of June 13, 1879—(Trans. 104.) Dawson, in order to sustain a claim to any *aliquot* portion of the fund, must have shown that such portion was produced by sale of that part of the property upon which he had the superior lien. On the hypothesis that he had a superior lien on the leasehold, he can claim only for so much of the proceeds of sale (not exceeding the amount of his judgments,) as was produced by a sale of the leasehold alone. The burden of proof, in this respect, is on Dawson; and the record failing to disclose that the leasehold of itself produced any part of the fund in court, none of it ought to have been decreed to him.

We have heretofore been notified by adversary counsel of a motion made by them to dismiss for want of jurisdiction, upon the ground that the amount in controversy is less than $5000.00, and have agreed that they may have the same benefit of their motion upon the hearing, as if theretofore presented—a right which they doubtless had without such agreement on our part.

ANSWER TO THE MOTION.

The sum in controversy exceeds $6000.00, claimed by Freeman, trustee, under *one title*, to-wit: under the trust deed made to him to secure sundry creditors. It matters not whether the several amounts due to the respective beneficiaries under the trust be respectively less than $5000.00 ~~or not.~~

E. Parte, Balt. & O. R. R. 106, U. S. 5.

Market Co. v. Hoffman 101, U. S. 112.

Sheilds v. Thomas 17, How. 3.

S. P. WALKER,

For Appellant.

110264

OFFICE SUPREME COURT U. S.
FILED
JAN 11 1884
M. KENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES—No. 202.

JOHN J. FREEMAN, TRUSTEE,
Appellant,
vs.
A. H. H. DAWSON,
Appellee.

ADDENDUM TO BRIEF FOR APPELLANT.

ON APPELLEE'S MOTION TO DISMISS.

Since preparing our brief, we have read the brief of counsel for appellee.

We had assumed that there could be no essential controversy as to the facts, on the motion to dismiss for want of jurisdiction, and hence, in anticipation of appellee's argument upon that motion, contented ourselves with simply citing several authorities against the motion, without any statement of facts.

Counsel for appellee, however, assume that Freeman, trustee, received $10,000, and hence make up a statement on page 2 of their brief, showing a balance of only $2870 due under the trust deed.

I.

The facts are these, as shown by the statement of C. W. Metcalf, pages 67–68.

The $10,000 referred to in the decree of June 13, 1879, as paid to Freeman, trustee, was made up of $8000 in money and

one of the $2000 purchase-money notes. The $8000 in money "was placed in the hands of C. W. Metcalf by consent of the parties in the above cause to be paid over to J. J. Freeman, trustee, *after paying certain prior incumbrances, costs, etc.*"

Trans. 27.

Out of this	$8000.00
Prior incumbrances and costs were paid to the amount of	3314.09
Leaving Balance handed to Freeman	$4685.91
In addition, Freeman received one of the purchase-money notes	2000.00
Total received by Freeman	$6685.91

Trans. 27.

This was an agreed statement made and filed June 30, 1880, long after the decree of June 13, 1879, cited in appellee's brief as authority for his statement. The incumbrances and costs so paid were ordered to be paid by the decree of June 13, 1879.

Trans. 108.

Assuming, therefore, that according to appellee's statement, the secured debts under the trust deed amount only

to	$12,870.00
If we deduct the amount received by Freeman	6,685.91
We have	$ 6,184.09

instead of $2870.00, yet due under the trust deed, without any computation of interest to the date of the decree below.

II.

Chatfield v. Boyle, (105, U. S. 231), and Terry v. Hatch, (93 U. S. 44), are wholly unlike the case at bar. In those cases the contest was between individual creditors under the assignment. Said the court, in the former case, "the appellants on this appeal represented no one but themselves," and so it may be said of the other case. But here Freeman, trustee, represented all the creditors under the trust on this appeal, and the record shows that the contest has been conducted by him

throughout, as the representative of this trust fund, and that the appeal was prayed by Freeman, as trustee, and was granted by the court to him, as trustee for all, and all this, the litigation, without objection on the part of any creditor.

Again, in the cases mentioned, the entire trust fund was not in dispute, but only the proportionate share of each contesting creditor as claimed in his individual and separate right against the other creditors. Here the whole fund is in dispute, and claimed by the trustee on the one hand, in the aggregate, for the benefit of all the creditors, against Dawson, who is claiming adversely to the trust.

Again, for the purpose of this motion, the court, as said in 105 U. S., *supra*, "will look only to the parties before it," and will not consider the question of *ultimate distribution* of the fund, nor will it consider the effect of the decree *pro-confesso* against some of the creditors. The *pro-confessos* were not taken upon any bill filed by Dawson, (he filed no bill nor cross-bill), but they were taken upon the bill filed by Steers & Co., to enforce his superior mechanic's lien, and in no way affected the question as between Freeman, trustee, or his beneficiaries under the trust deed, as against Dawson.

The only question here is: whether there is one aggregate fund in dispute, claimed under one title by the common representative, for the benefit of all the creditors under the trust.

See authorities in former brief.

S. P. WALKER,

For Appellant.

110-264

Supreme Court of the United States

JOHN J. FREEMAN, TRUSTEE, Appellant,
vs.
A. H. H. DAWSON, Appellee.
} No. 202

BRIEF AND ARGUMENT FOR APPELLEE,

On motion to dismiss appeal for want of jurisdiction.

D. H. POSTON AND W. K. POSTON
Attorneys for Appellee.

E. C. TOOF & CO., PRS. & LITHS., MEMPHIS.

to satisfy the latter's claim, and the remaining $10,000 paid to Freeman to be applied to the trust deed.

See decree of June 13, 1879, rec. pp. 104 to 109.

The trust deed to Freeman was executed to secure *nine* creditors, the amounts due to each being respectively stated therein as follows: $6000, $5000, $2000, $2000, $1000, $1000, $500, $500 and $370,

Aggregating..... $17,370

The proof in the record is uncontradicted that the $6000 debt to Chas. Yeager named in the trust deed, consisted of three notes of $2000 each, made by Daniel and endorsed by Yeager, to be negotiated to raise money, and that only $1500 was borrowed on them. See deposition R. C. Daniel, ans. to ques. 14, record page 73.

Therefore, deduct from amount of secured debts... 4,500

Leaves balance..... $12,870

From which deduct amount paid Freeman, trustee, under order of court..... ~~10,000~~ 6685.91

Leaves only due on trust deed..... ~~$2,870~~ 6184.09

~~A sum without the appellate jurisdiction of this court.~~

But again, if the unpaid balance due on the aggregate debts secured by the trust deed were conceded to amount to $6000, it is clear that no one creditor secured thereby would be entitled in any event to as much as $5000, and under such circumstances the creditors, by joining themselves in an appeal, could not add together the amounts due each and so confer jurisdiction.

Chatfield v. Boyle, 105 U. S. 231.

Schroed v. Smith, 106 U. S. 188.

In this case not only the trustee, Freeman, but also all the beneficiaries in the trust deed, were made formal parties and regularly brought into court.

See stipulation of counsel, paragraph 1, rec. p. 1.

None of the beneficiaries asserted their claims except Mrs. S. Higgins Craig, Mrs. F. L. Handley and Mrs. E. E. Lowery, all the rest allowing pro confessos.

See decree of June 13, 1879, rec. pp. 104, 105.

This court, in Chatfield v. Boyle, supra, upon precisely similar facts, ruled that the failure of some of the creditors, secured by a trust deed to assert their claims, would not result in their pro rata shares of the fund going to the other secured creditors who did litigate, and that the distributive shares of the latter, in such case, would be the matter in dispute.

We insist that the limitation on the jurisdiction of this court cannot be evaded in a case like this, where a trust deed or mortgage made to secure creditors for amounts certain and fixed, is being enforced and foreclosed, and the beneficiaries are made parties and the trust property has been converted into money and is in the custody of the court for distribution among the parties entitled, by allowing a very naked trustee, already shorn by the court of all the powers conferred on him by the trust deed, to take an appeal, when the beneficiaries could not collectively nor singly do so.

It is a well settled principle, that a trustee takes no greater estate than the purposes of the trust require.

This trust was to secure the payment of certain debts, and gave the trustee power, in case of default in their pay-

ment, to sell the property and with the proceeds pay the debts.

Upon the sale being made by a court of equity, having all the parties before it, and having the funds in court to distribute, what possible necessity or purpose of the trust could be subserved by the further intervention of the trustee? All the powers and duties of the trustee have already been performed by the court, unless it be the mere distribution of the money among the beneficiaries. The amounts due them are certain and fixed. The beneficiaries are formal parties to the suit and regularly before the court. The distribution can as well be made by the court as by the trustee. Upon what principle can he do for the beneficiaries, what they cannot either jointly or severally do?

ON MERITS.

STATEMENT OF CASE.

This is a contest over a fund in court, arising from the sale of a leasehold with cotton compress and machinery thereon. The controversy is as to priority of liens of creditors of R. C. Daniel, to whom said property belonged—appellee Dawson claiming under levies made *July 9th, 1878*, by the marshal on two executions from the U. S. Circuit Court at Memphis on judgments therein recovered June 6th, 1878, by him against said Daniel, and Freeman, as trustee, claiming under a trust deed executed *November 22d, 1878*, by said Daniel to secure payment of certain debts and filed for registration the same day.

The main contention now is upon the question as to whether or not the levies were *abandoned* by the marshal, so as to let in and give priority over them to the said trust deed.

There was in the court below a third contestant, T. B. Steers & Co., who claimed a mechanic's lien on the property. Steers & Co. filed the bill in which the contest was made, now appealed; all the parties claiming liens on the property were made defendants to that bill. The priority of claim of Steers & Co. was conceded, and by a decree of court the property was sold, the proceeds brought into court, the claim of Steers & Co. paid off, and a fund of $6000 reserved to abide the result of the contest between Dawson and Freeman.

The facts on which it is claimed on behalf of Freeman

that the levies were abandoned by the marshal, are as follows :

On June 6th, 1878, Dawson recovered his two judgments against Daniel by default for want of pleas. On June 13th, 1878, Daniel moved the court "to vacate the judgments," which motions were continued to the next term of court "*without prejudice to either party.*" On July 5th, 1878, executions on said judgments were issued and were on July 9th, 1878, levied on said property.

The attorneys of Daniel wrote to the circuit judge, representing and claiming that said executions were prematurely issued pending the motions to vacate the judgments, and requesting him to order their recall. On August 5th, 1878, Judge Baxter wrote a letter to the clerk *suggesting* that, *if* the facts were correctly represented to him, the executions were prematurely issued and should be recalled.

Upon the supposed authority of the suggestions of this letter the clerk on August 7th, 1878, issued to the marshal an anomalous paper stating that "I notify you that the executions issued in the two above named cases were issued without authority, and *request* you to return the same unexecuted."

Nearly a month before Judge Baxter wrote this letter, the levies had been made and notice given that sale thereunder would be made on *August 8th*, 1878.

On *August 17th*, 1878, the marshal returned the executions into court, with his return endorsed thereon showing his levies on said property and notice of sale.

At the next term of the court, on January 6th, 1879, the motions to vacate said judgments were overruled, and at

the same term, on February 8th, 1879, the court issued writs of venditiona exponas for the sale of the property so levied on under said executions, in the order for said writs of venditiona exponas expressly adjudging that said "levies this court now adjudges as still in full force, and unabandoned by the marshal, and the property so levied on is still in his possession by virtue of said levies."

See writs of vend. exp., record pp. 28, 29, 34, 35.

The application of Dawson for these writs of venditioni exponas was hotly contested by Daniel upon the ground now urged here, that the levies were abandoned by the marshal, and upon the further ground that the issuance of the executions before the court had disposed of the motions of Daniel to vacate the judgments, was premature, and rendered the execution and all proceedings thereunder void. Both propositions were thoroughly considered by the judge, and in a written opinion ruled both upon the law and facts in favor of Dawson.

Dawson v. Daniel, 2 Flippin's U. S. C. C.

The marshal was proceeding to a sale of the property under said writs, when on February 15th, 1879, on petition or amended bill of Steers & Co., in their suit then pending on the equity side of said court, on their application an injunction was granted and issued stopping the sale.

See order for injunction and writ, record pp. 13, 14.

We understand that it is not claimed on behalf of appellant that the *legal effect* of any of these court proceedings in any way invalidated or vacated these levies, but it is claimed that as matter of *fact*, the marshal both intended to and did in fact abandon the levy, and upon this contention rest their case.

We insist that the record does not sustain their view.

It is true that the marshal, upon the nondescript paper issued by the clerk *requesting* return into court of the executions, did return them into court, as he says in his return, "without further proceedings."

See marshal's return, record pp. 27 and 33.

But the marshal in his deposition most positively states that he did not abandon the levies, nor ever intended doing so. He states that he hired a watchman to guard the property from fire, and when the notice from the clerk came he withdrew the watchman, but before doing that he was notified by the attorneys of Dawson that it was not necessary to the validity of his levies that he should keep a watchman there, but that he must on no account abandon his levies; and that if he did, they would hold him and his official bond liable, and for this reason he was careful to do nothing which could be construed an abandonment of the levies.

Deposition of Marshal Williamson, record pp. 40 to 47.

In this he is corroborated by the deposition of D. H. Poston, attorney of Dawson.

Record pp. 48 and 49.

BRIEF.

If it were conceded that these executions were prematurely issued, (which is not) neither the executions nor the levies would be void.

Blaine v. Ship Castor, 4 Cranch 333.
Bacon v. Cropsey, 7 N. Y. 199.
Carson v. Walker, 16 Mo. 85.
Wilkinson's Appeal, 65 Pa. St. 190.
Lynch v. Kelly, 41 Cal. 232.
Freeman on Executions, sec. 25.

If the letter of Judge Baxter to the clerk, and the nondescript paper from the clerk to the marshal, *requesting* return of the executions, should be construed to be a supersedeas, that would not have the effect to vacate or nullify the levies *previously made*.

Boyle v. Zacharie, 6 Peters 648.

Where a lien is fixed upon *goods* by the issuance or levy of an execution, the lien is not lost nor displaced by an *order* of the court staying further proceedings, until a rule obtained by the defendant could be disposed of.

Bond v. Willett, 31 N. Y. 102.
Batdorf v. Fotch, 44 Penn. St. 195.

But it is claimed by adversary counsel that the marshal abandoned the levies, by withdrawing the watchman placed by him in charge of the property to guard it, and by notifying the counsel of Steers & Co. that he had withdrawn him.

We reply, that as to property of this character, whether it be strictly realty or personalty, being partly land, and the remainder ponderous and immovable machinery imbedded deeply into the soil, that it is not required either in making or holding the levy, that the officer should either remove it or take it into his actual possession.

Freeman on Executions, sec. 263.
Farrington v. Sinclair, 15 Johnson 428.

This court has ruled that in levying on a *box of jewelry*, the marshal need not take it into his actual possession, but may declare his levy without actual seizure.

Vesy v. Watkins, 23 Howard 469.

Manual interference with property is not necessary, but an open assertion of right by virtue of process with respect to goods in his power, is an actual possession and a sufficient levy.

Barker v. Banninger, 14 N. Y. 277.
Pugh v. Calloway, 10 Ohio St. 488.
Caldwell v. Fifield, 4 Zabriskie 150.
Hill v. Harris, 10 B. Monroe 120.
Jacques v. Dillon, 28 Miss. 283.

The mere fact that property after being levied on is left in possession of the debtor is no abandonment of the levy.

Brown v. Allen, 3 Head 428.
Etherige v. Edwards, 1 Swan 426.

The written opinions of Judge Hammond, in deciding the case now on hearing, and also the application of Dawson for writs of venditioni exponas, where the same questions were involved and urged, are replete with logic, and contain a very full examination of the authorities.

Steers v. Daniel, 4 Federal Reporter 587.
Same case, 2 Flippins Circuit C.
Dawson v. Daniel, ibid.

Leasehold in Tennessee by express statute and by the decisions of our Supreme Court in construing that statute, is realty.

We make this statement because the question is one of a rule of property, and the property being situated in Tennessee, authorities are unnecessary to show that this court are bound by that rule of property laid down by the law of the State where the land lies.

But aside from this we feel we can show by the decisions of this court that a leasehold is real property, and that such fixtures, though placed thereon for the purpose of trade, pass with and become part of the freehold.

True, at common law leasehold is personalty, no one disputes this; but here it is changed by express statute.

Code of Tennessee, sec. 51, provides:

"'Real estate,' 'real property,' 'land,' include lands, *tenements* and *hereditaments*, and *all rights thereto* and *interests therein, equitable* as well as *legal*.

Burr v. Graves, 4 Lea 555.

Is a very important authority in the case at bar. It decides the question of leasehold, the validity of a levy, and that like fixtures, though put there for the purposes of trade, become part of the freehold. The opinion is by Judge Cooper, the able jurist, who counsel on the other side compliment so highly. His opinion they rely on so much was made in April, 1874; ours in April, 1880. We trust this short time will not cool their ardor for his strength and power as a judge. From what they say he is always right, and in the 4 Lea case we heartily concur with them in this view.

Burr v. Graves was a suit over a steam engine, boilers and other machinery and fixtures, located on leased land, and used for carrying on the business of cleaning cotton.

Say the court (on p. 555):

"The only question of real difficulty in the case is, whether the levy of the attachment was good as against the defendants. *Independent of statute, a leasehold interest in land should be levied on and sold as personal property, and so of the building and fixtures set in and attached to the soil.*

* * * * * * *

"Our Code provides that the word land, whenever used in the compilation, shall be held to include lands, tenements and hereditaments, and all rights thereto and interests therein. Code, sec. 51. The words 'real estate,' are given by the same section the like extensive meaning.

* * * * * * *

"It is obvious therefore, that under the statute which gives a lien on land, and is construed to include a leasehold interest, the levy is intended to be uniform for all land, and that the same levy which would be good upon land proper, meaning the entire fee, would be equally good as to any interest in land subject to the like lien enforceable by the like attachment.

* * * * * * *

"The levy, which would be good as to the land, must be equally good as to the buildings, fixtures and improvements, at any rate so long as they remain attached to the soil, although severable."

Guthrie v. Jones, 108 Mass. 191.

Pemberton v. King, 2 Dev. 376.

Kelley v. Schultz, 12 Heisk. 218. Say the court:

"It is conceded that the question was decided correctly in that (former) opinion, on common law principles, but it

is now insisted that the Code has changed the character of a leasehold, making it realty."

* * * * * *

"Upon consideration of this section, we conclude that a leasehold is real estate, under the description of such property in the Code, sec. 51, being an interest in the land."

* * * * * *

Choate v. Tighe, 10 Heisk. 621.

Extends the vendor's lien for purchase money to a leasehold interest.

To the same effect see:

Richardson v. Bowman, 40 Miss. 783.

Bratt v. Bratt, 21 Md. 578.

Alexander v. Miller, 7 Heisk. 82.

Construing this same statute as to a life estate, our court say:

"Conceding that at common law an estate for life in lands is not an estate of inheritance, this common law has been altered and modified by statutory provision."

* * * * * *

"But our statute enlarges the definition of the term by including all rights thereto and interest therein, equitable as well as legal."

"A right to or interest in land is, in view of our law, precisely the same thing as land, and the course of descent of the one and the other is regulated by the same law. If a life estate, therefore, be an interest in or right to land, it descends as a fee simple estate does, and by the express terms of the statute is an estate of inheritance.

SECOND.

And fixtures put upon the land, though only for the purpose of trade or business, become part of it.

We can add nothing to this, except to quote the words of Mr. Justice Miller, in Kutter v. Smith, 2 Wall 499:

"Such erections become a *part* of the land, as each stone and brick are added to the structure.

"We cannot concede that plaintiff or his assignor had at *any time* the *legal title* to the buildings as *distinct* from the lot. The only exceptions to this rule are the class of fixtures already adverted to, and such rights as may grow out of *express contract*.

"It is argued that the plaintiff's assignor became the *owner*, and had *title* or estate in the *building* as *separate* and *distinguished* from the *land*. * * But if we concede *so singular* a proposition as that the *title* to the *soil* was in the defendant, while *that* of the *building* was in the plaintiff, it by no means follows that defendant is bound to purchase plaintiff's buildings."

Leasehold is realty. The fixtures, "as each stone and brick are added to the structure," become a part thereof. The title to the building cannot be in the lessee, while that to the land is in the lessor. The title to both is in the same. The lessee has an estate in the land, the leasehold is realty, the fixture has become a part of it, there is no difference and there can be no distinction between the things themselves or the titles to them; they are the same part and parcel of an estate, and the title of that estate is in one and the same person.

Degraffenreid v. Scruggs, 4 Hump. 452. Say the court:

"In this case the gin was erected in the ginhouse and fastened to the house by nails and braces. It was, therefore, permanently attached and fixed to the freehold, and this is the true and certain criterion to determine whether it passed by the deed with the freehold.

* * * * * * *

"If fixtures attached to the freehold may be removed, provided they can be severed without any injury to the land, scarcely a case could occur in which they would pass by the deed."

See Walker v. Sherman, 20 Wend. 636.

Childress v. Wright, 2 Cold. 350.

It is a well established rule of common law, that everything affixed to the freehold, passes with the freehold.

Cannon v. Hare, 1 Tenn. Ch. 28.

We beg the attention of the court to the very just and proper criticism of our learned judge, Mr. Cooper, on the exceptions that are now allowed in favor of the tenant as to the old common law rule, that anything affixed to the freehold passes with it. In the case above he says:

"The exceptions have been carried very far by some decisions of the Eastern States. * * * *
It is, however, in somewhat *loose expressions* of the *court* in these cases, and *not* from the *cases themselves*, that the *principle* asserted derives *some* countenance. The first, where the *dicta* are most latitudinarian, was merely the removal of a padlock and some loose boards, about which there never could have been any reasonable doubt. The second was the removal of a cider press by the tenant, and there, no reasonable doubt of its being an implement for the

manufacture of cider could be entertained. The last case runs to a little more magnitude, for it was removing a *sort* of a house."

The decisions in 55 Indiana and 5 Heisk. relied on by counsel against us, it will be seen were cases where, as Mr. Justice Miller says in 2 Wall 499, such "*rights as may grow out of express contract.*"

THIRD.

The doctrines of "lis pendens" and "res judicata" apply to the cause at bar, and settle the rights of the parties. The decree of February 8, 1879, in the cases of Dawson v. Daniel, adjudging the levies made by the marshal in July, 1878, valid, and ordering a vendi to issue for the sale of the property, was a decision as to who held the title to the property. The court decided the marshal had it. By the levy of his execution it vested the title in him, and this decision, we submit, is "lis pendens" and "res judicata" as to all persons who acquired any interest in the property after our levy in July, 1878. And Freeman cannot now come in and raise this question of title to the property. This has been adjudged in our favor. And neither Freeman nor his beneficiaries were necessary parties, nor did they have any right to be made such. It was our right to ignore their claim to the property and proceed to a final adjudication.

Exchange Bank v. Andrews, 12 Heisk. 306.

In this case the court held that—

1. The purchaser of property involved in litigation must abide by the result of the litigation.

2. While the complainant may make the purchaser a party, or may ignore the purchaser and proceed to final

decree against the original parties, the purchaser is not entitled to be made a party to the litigation, either by petition or by original bill in the nature of a supplemental bill.

Roberts v. Francis, 2 Heisk. 132. Nelson, J., says:

And it is quite clear that Alexander, the purchaser at an execution sale, cannot for two reasons successfully set up his title; first, because the legal title was in Barton, the trustee at the time of the levy and execution sale, and he acquired nothing by his purchase; secondly, because he was a purchaser after the commencement of this suit. It is well settled that a purchaser will be affected with constructive notice whenever his purchase is made during the prosecution of the suit brought to enforce an adverse claim or title, which is set forth with sufficient certainty and distinctness to advise him of its bearing on the property in litigation.

Shelton v. Johnson, 4 Sneed 680. Caruthers, J., says:

This rule (as to lis pendens) is founded more upon the necessity for it to give effect to the proceedings of courts than upon any presumption of notice. Without such a principle, all suits for specific property might be rendered *abortive*, by successive alienations of the property in suit; so that at the end of one suit, another would have to be commenced, after that, another, by which it would be rendered almost impracticable for a man ever to make his rights available by a resort to the courts of justice.

Tharpe v. Dunlap, 4 Heisk. 455.

And the lis pendens begins from the service of the subpœna after filing the bill.

Williamson v. Williams, 11 Lea 355.

Thus it is seen we obtained judgment June 6, 1878. We had an execution issued and levied on the land. Freeman takes his trust deed Nov. 22, 1878. Can it be that this was not lis pendens in its very strongest form, and that all of Freeman's right under the trust deed are subordinate to ours.

If for the sake of argument we would concede that the leasehold and the fixtures, both, were personal property, yet we submit that under the decisions of the United States Supreme Court and our own Supreme Court, to constitute a valid levy on personal property it is not necessary that the officer should remain in *actual manual* possession; the levy *vests in him* the title to the property; it is in custodia legis.

Very v. Mathews, 23 How. 474,

Was a case where a marshal levied on a box of jewelry, but did not take possession of it or take it away with him. The court held that, "To make a valid levy on goods and chattels on a writ of fi. fa, if the officer charged with the duty has a lien on them, and they are in his power, and he declares that he makes a levy or seizure of them in execution, such is a *valid levy, without taking them into his possession.*"

Bradley v. Kesee, 5 Cold. 226.

Holds that a levy on personal property puts it in custodia legis, and it is a valid levy without the officer taking it into his possession.

This case shows that the doctrine insisted on that to constitute a valid levy on personal property, the officer must remain in possession, is now the law in England, but is not

in the United States; here he must see the goods, they must be subject to his control, but this is all.

Evans v. Barnes, 2 Swan 292.

Holds the same, and further, that a levy upon personal property without the officer's taking it into his possession so completely *vests* the title in him as to authorize him to sell even after the writ is functus officio.

Lester's Case, 4 Hum. 383.

Holds the same, and shows that the absurdities of the officer *cannot change* the condition, in which by *operation* of *law*, the property was placed. The levy *vested* the *legal* title in the officer, it was in *custodia legis*, he held the title although he'd returned the writ, and the title was so completely vested in him by the levy, that though he had returned the writ, it did not require another to issue, but a sale by him of the property, passed the title by virtue of his levy.

Brown v. Allen, 3 Head 429. Hold that:

The title which passes into the officer, by *virtue* of the *levy, does not depend* upon the *removal* of it from the *possession* of the *defendant* in the execution.

* * * * * *

This title of the officer *is not destroyed* either by taking out an *alias*, or an *order* of sale. Neither would, the taking of a delivery bond on an alias, without forfeiture, have this effect. These *subsequent proceedings* would be *merely nugatory*, as the *title vested in the officer* by the *levy* would *authorize* him to *sell* at *any* time, *even after* the *execution* had become *inoperative*. Nothing short of the satisfaction of the debt, or some recognized act of abandon-

ment, or waiver, either by the creditor or officer, could have the *effect* to *destroy* the *title vested* by the levy, or *restore* the *right* of *property* to the *execution debtor*.

And in this view of the case, too, we submit it is with us.

FIFTH.

When we come to the question of *abandonment*, then the law is that the *intention* of the officer controls. Well, surely, on this record no one will contend that Williamson *did intend* to abandon his levy; not only that, but he swears he *intended not* to abandon his levy. When the record is investigated it will demonstrate that Williamson's whole trouble arises because he does not know what constitutes a levy legally. It is his attempt to give it a legal construction—that is the difficulty. But as is said in Lester's case, 4 Hum. 383, the absurdities of the officer cannot change the condition in which, by *operation of law*, the property was placed. The levy vested the *legal title* in the officer; it was in custodia legis; he held the title although he had returned the writ. The property, the leasehold and fixtures is realty. Williamson could have stayed in his office and made as valid a levy as by going to it, but we are saved this position. Say it was personalty, and under the decisions unquestionably his levy is valid; certainly he did not abandon it, and as a consequence the decree below was correct.

The court below sustained Dawson's claim to this fund also, independent of the lien arising from the levy of the executions, upon the grounds that his *judgments* were liens upon this property from their *rendition*, and therefore prior liens to the trust deed to Freeman.

Steers v. Daniel, supra.

The decree of the court below may well be sustained upon that ground.

The Code of Tennessee enacts:

"Judgments and decrees obtained in any court of record in this State in the county where the debtor resides at the time of rendition, shall be a lien upon the debtor's *land* from the time the same were rendered.

Code of Tennessee, section 2980.

Section 2982 of said Code provides that such lien shall continue one year.

Said Code further provides that the words used in this Code, 'real estate,' 'real property,' 'land,' include lands, tenements and hereditaments, and all rights thereto and interests therein, equitable as well as legal.

Code of Tennessee, section 51.

And so in a variety of questions the Supreme Court of Tennessee have ruled in construing said sec. 51 of the Code, that a leasehold estate was *realty* of the tenant.

Kelly v. Schultze, 12 Heisk. 218.

Choate v. Tighe, 10 Heisk. 621.

The uncontradicted proof in the case showed that R. C. Daniel, the owner of the property, resided in Memphis at the date these judgments were rendered, June 6th, 1878.

Ans. T. A. Taylor to q. 1 Re-ex., record p. 86 and 87.

Deposition of Tom Gale, ans. to q. 2, record, p. 92.

Deposition of Amos Woodruff, ans. to q. 2, record, p. 94.